MAY 13 1981

Item 546-D GA1.13:CED-81-52

REPORT BY THE

Comptroller General

OF THE UNITED STATES

ORIGINAL

Congressional Guidance And Better Federal Coordination Would Improve Marine Mammal Management

Because of growing concern over the survival and well-being of marine mammals, the Congress passed the Marine Mammal Protection Act in October 1972. GAO selected five species to review the effectiveness of the regulatory actions of the Departments of Commerce and the Interior and also the efforts of the Marine Mammal Commission which oversees the regulatory and research activities of Federal agencies in carrying out the act's provisions.

Federal and State actions have been initiated to help ensure the protection, conservation and, in some cases, recovery of marine mammals; however, progress has been slow and improvements are needed to satisfactorily meet the act's objectives and goals. GAO believes a numbe of changes need to be made in the act and in the regulatory agencies' administration of the program.

GAO recommends amendments to the act and agency action to improve program administration.

CED-81-52

MAY 11, 1981

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-198126

The Honorable John B. Breaux
Chairman, Subcommittee on Fisheries
and Wildlife Conservation and the
Environment
Committee on Merchant Marine and
Fisheries
House of Representatives

Dear Mr. Chairman:

This report discusses changes needed in the Marine Mammal Protection Act of 1972. In response to Representative John D. Dingell's request, we reviewed the activities and effectiveness of the Marine Mammal Commission and the Departments of Commerce and the Interior in fulfilling the act's requirements and discussed with interested States their marine mammal programs.

We are sending copies of this report to Representative John D. Dingell; the Director, Office of Management and Budget; the Secretaries of Commerce and the Interior; the Executive Director, Marine Mammal Commission; appropriate House and Senate committees; Members of Congress; and other interested parties.

Sincerely yours,

Milton J. Socolar

Acting Comptroller General
of the United States

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COMPTROLLER GENERAL'S
REPORT TO THE SUBCOMMITTEE
ON FISHERIES AND WILDLIFE
CONSERVATION AND THE
ENVIRONMENT, COMMITTEE ON
MERCHANT MARINE AND FISHERIES
HOUSE OF REPRESENTATIVES

CONGRESSIONAL GUIDANCE AND BETTER FEDERAL COORDINATION WOULD IMPROVE MARINE MAMMAL MANAGEMENT

D I G E S T

Because of growing public and congressional concern over the survival and well-being of marine mammals, the Marine Mammal Protection Act (16 U.S.C. 1361 et seq.) was passed in October 1972. The act substituted a single Federal program that was intended to be comprehensive in scope and coordinated in implementation for the State programs that existed before the act. It also established a moratorium on the taking of marine mammals in U.S. waters and/or the importation of marine mammals and marine mammal products into the United States, provided for waiver of the moratorium and return of management to the States under certain conditions, and created the Marine Mammal Commission.

While the Commission has overview responsibility concerning marine mammals, regulatory responsibility for the care, protection, conservation, and recovery of marine mammals is split between two Federal agencies--the Department of Commerce and the Department of the Interior.

GAO studied the effectiveness of the Commission and the marine mammal management program. GAO's review covered Federal and State management of five species of marine mammals--the walrus, bowhead whale, West Indian manatee, California sea otter, and Hawaiian monk seal.

Under the act, many Federal and State actions have been initiated to help ensure the protection, and, in some cases, recovery of marine mammals. However, progress has been slow and improvements are needed to satisfactorily fulfill the act's objectives and goals.

CED-81-52

Tear Sheet. Upon removal, the report cover date should be noted hereon.

GAO believes a number of changes need to be made in the act and in the administration of the program by the regulatory agencies.

ROLE OF FEDERAL REGULATORY AGENCIES AND THE MARINE MAMMAL COMMISSION

Under the act, the Secretary of the Interior has regulatory responsibility for marine mammals which maintain a close proximity to land (i.e., polar bears, manatees, sea otters, marine otters, walruses, and dugongs). The Secretary of Commerce has regulatory responsibility for marine mammals in an ocean environment, including whales, porpoises, seals, and sea lions. Each Secretary has the responsibility for designating marine mammals as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and/or depleted under the marine mammal act. Each Secretary also has the responsibility under the marine mammal act for granting waivers of the moratorium to States on taking of marine mammals, returning management to the States, and granting permits for scientific research on or public display of marine mammals.

The Commission oversees virtually all activities that affect the protection, conservation, recovery, and care of marine mammals. It has played a highly active and constructive role in marine mammal activities through administrative efforts, coordination of research, and financial assistance. It has worked closely with Federal agencies, States, and other parties in carrying out the act's provisions.

IMPROVEMENTS NEEDED IN THE MARINE MAMMAL PROGRAM

GAO's review of selected species disclosed a need for amendments to the act to facilitate marine mammal management and for improvements in the administration of the marine mammal program by the regulatory agencies.

Hunting by Natives is not controlled unless the species is depleted; however, such hunting is for subsistence and handicraft purposes only and is not to be done in a "wasteful" manner.

Amending the act to permit the responsible Secretary to establish control features before the population is depleted or the marine environment is severely damaged is needed for effective management. Vagueness of certain terms such as "subsistence" and "wasteful" which are used to describe the conditions for Native harvest should be clarified to ensure better enforcement of the act. (See pp. 29 and 30.)

Because fishery resources and marine mammals interact, such as in the case of the abalone and the sea otter, conflicts occur in the administration of the Magnuson Fishery Conservation and Management Act and the marine mammal act. GAO found that fishery and marine mammal managers differ in their interpretations of the two acts' basic goals. GAO believes that the Congress needs to amend both laws to clarify the extent to which the administration of each law should consider the goals and objectives of the other, if at all. (See pp. 86 and 87.)

In January 1973 the State of Alaska requested, under the provisions of the marine mammal act, a waiver of the moratorium on the taking of nine species of marine mammals and a return of management of the species to the State. Reaching a decision on this request has been a slow process, and some 8 years after the State's request, many problems and issues still remain unresolved. GAO believes that Federal agencies need to act faster on States' requests for a waiver on the taking of marine mammals and return of management to the States. (See pp. 28 to 30.)

Because the jurisdiction to administer the marine mammal act is divided, two agencies are performing similar, if not duplicative, functions. Therefore, program administration would be improved by interagency

agreements to implement the act's provisions. (See pp. 28 to 30 and 82.)

GAO also found that the regulatory agencies have not provided priority attention to fulfilling the provisions of the act. For example, the Interior did not start work on a recovery plan for one endangered species until 1978, although the Endangered Species Act was passed in 1973. Interior officials stated that they are making some organizational changes to focus attention on marine mammals. GAO believes, however, that the proposed changes will not adequately resolve the management problems that have hindered the program in the past. (See pp. 53 and 54.)

GAO makes recommendations to improve the legislation affecting the management of the program and also recommends a number of changes that should be made by the respective Secretaries having regulatory responsibility for the management of marine mammals.

APPRAISAL OF AGENCY COMMENTS

Three Federal agencies--the Commission, Commerce, and the Interior--and four States--Alaska, California, Florida, and Hawaii--provided comments on the draft report.

Generally speaking, the Federal agencies agreed with the findings and most recommendations, but they did not agree with some of GAO's conclusions and the recommendation to clarify the goals and objectives of the fishery and marine mammal acts.

Commerce agreed that changes in the acts could improve the effectiveness of marine mammal management but stated that in its view their objectives and goals though different are not necessarily inconsistent. GAO believes that to improve management of the fishery and marine mammal acts, the Congress should clarify their goals and objectives and make it clear to what extent the interests of each act must be considered in fulfilling the objectives and goals of the other. (See p. 89.)

The Interior also took the position that the goals of the acts are not in conflict but stated that the management concepts of "optimum sustainable population" (in the marine mammal act) and "maximum sustainable yield" (in the fishery act) need to be clarified.

GAO believes that such terms would be clarified if the Congress amends both laws to make it clear to what extent the administration of each law should consider the goals and objectives of the other. (See p. 86.)

The Commission said that it did not believe legislative clarification of the fishery and marine mammal acts is required at this time. The Commission said the Congress should first direct the Federal regulatory agencies to attempt to develop either guidelines or regulations to address the issues and if this is not successful then to proceed legislatively. Some Federal agencies, such as Commerce, have drafted guidelines for identifying and resolving inconsistent approaches to fishery management under the fishery act and other statutes. GAO believes that a clarification by the Congress of the fishery and marine mammal acts' goals and objectives will be useful to Federal and State agencies in developing and amending such guidelines and regulations in the future.

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ABBREVIATIONS

BLM	Bureau of Land Management
ESA	Endangered Species Act
FCMA	Magnuson Fishery Conservation and Management Act
FWS	Fish and Wildlife Service
GAO	General Accounting Office
IWC	International Whaling Commission
MMC	Marine Mammal Commission
MMPA	Marine Mammal Protection Act
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration

CHAPTER 1

INTRODUCTION

On September 26, 1979, Representative John D. Dingell requested that we study the Marine Mammal Commission's (MMC's) effectiveness and operations. Subsequently, on March 5, 1980, Mr. Dingell asked us to study the effectiveness of the marine mammal management programs within the Departments of Commerce and the Interior and any other Federal or State agency involved in enforcing or coordinating activities under the Marine Mammal Protection Act (MMPA) of 1972 (16 U.S.C. 1361 et seq.). Pursuant to this request, and in agreement with the Congressman's office, we reviewed Federal management and coordination of five separate species of marine mammals--the bowhead whale, walrus, West Indian manatee, California sea otter, and Hawaiian monk seal.

MARINE MAMMAL PROTECTION ACT

MMPA sets forth a national policy to encourage development of marine mammal populations to optimum sustainable population levels, while maintaining the health and stability of the marine ecosystem. 1/ The central features of MMPA are the indefinite moratorium on the taking 2/ and importing of marine mammals or their products into the United States without permit and the preemption of States from having management authority over marine mammals.

MMPA substitutes a single Federal program that was intended to be comprehensive in scope and coordinated in implementation for the State programs that existed before MMPA's passage. Although MMPA immediately preempted State authority over marine mammals, it also established a mechanism whereby States could regain management authority and Federal financial assistance for carrying out approved State programs.

1/A community of marine organisms and their environment functioning interrelatedly as a unit of nature.

2/Defined by MMPA as harassing, hunting, capturing, killing, or attempting any of these acts.

Similarly, while MMPA established an indefinite moratorium on the taking and importation of marine mammals or their products, it allowed for the waiver of the moratorium when the population was determined to be at optimum sustainable population levels, permitted certain exemptions, and established a process whereby permits can be issued during the moratorium for the taking of marine mammals for scientific and public display purposes and for taking marine mammals incidental to commercial fishing operations.

The exemptions provided for in MMPA apply to Natives of the North Pacific or Artic Ocean areas (Indians, Aleuts, or Eskimos) and to northern fur seals harvested pursuant to the Interim Convention on Conservation of North Pacific Fur Seals. 1/

Natives are exempt from the moratorium on taking of marine mammals when they hunt for subsistence purposes or for creating and selling authentic Native articles (handicrafts and clothing). Whether taken for subsistence or for handicraft purposes, however, MMPA requires that the taking must not be done in a "wasteful" manner.

The exemption regarding the harvest of northern fur seals results from the provisions contained in MMPA which state that MMPA should not be

> "* * * in contravention of the provisions of any existing international treaty, convention, or agreement, or any statute implementing the same, which may otherwise apply to the taking of marine mammals."

MMPA established a U.S. international policy for marine mammal protection. MMPA also restricts importation of certain products from foreign countries whose fishing or other practices impede MMPA's policy goals.

Until the late 1960s, Federal wildlife legislation generally did not provide for a comprehensive and coordinated program for conserving wildlife. Not long after the

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1/Interim Convention on Conservation of North Pacific Fur Seals prohibits pelagic (at sea) sealing except by aboriginal Natives using primitive methods and arranges for a sharing of seal skins taken on land by member countries--Canada, Japan, the Soviet Union, and the United States.

Endangered Species Conservation Act of 1969 was enacted, strong sentiment was expressed by many for the world's ocean mammals. Commercial interests and some members of the scientific community felt that marine mammals represented an important commercial and food resource which, under proper management, could be used through sustained harvests. Other members of the scientific community said marine mammals had an important ecological role to play in marine ecosystems and that the first priority of any Federal policy on marine mammals should be to recognize and protect that role. A third group--conservationists and protectionists--believed that marine mammals should be left undisturbed and declared off limits to any human harvesting.

Because of the stated interests and opinions, the Congress, in 1972, examined the need for marine mammal conservation and protection. It found that there were marine mammals in danger of extinction because of man's activities and various forms of commercial overexploitation of mammal resources. The Congress concluded that action was necessary to conserve and protect marine mammals from depletion 1/ of population stocks and to provide for an ecosystem management scheme to conserve future marine mammal populations. In October 1972 the Congress enacted MMPA.

FEDERAL ORGANIZATIONAL RESPONSIBILITIES

To carry out the policy and program objectives of MMPA, the Congress divided the authority for conservation, management, and protection of marine mammals between the Secretaries of Commerce and the Interior. The Congress

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1/The term depletion or depleted, as defined in MMPA, means that the number of individuals within a species or population stock

a) has declined to a significant degree over a period of years;

b) has otherwise declined and if such decline continues, or is likely to resume, such species would be subject to the provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); or

c) is below the optimum carrying capacity for the species or stock within its environment.

made this decision after concluding that Commerce's National Oceanic and Atmospheric Administration (NOAA) was the agency best equipped (in terms of laboratories, experienced personnel, and other facilities) to deal with marine mammals on an ecosystem basis in the oceans; and that Interior was best equipped to deal with marine mammals that maintain a close proximity to land. Therefore, the Secretary of Commerce is responsible for whales, porpoises, seals, and sea lions, and the Secretary of the Interior is responsible for all other marine mammals (manatees, polar bears, sea otters, marine otters, dugongs, and walruses).

Each Secretary has delegated responsibility to the appropriate agency in his respective department--the National Marine Fisheries Service (NMFS) and NOAA in Commerce and the Fish and Wildlife Service (FWS) in the Interior.

Within NMFS, the Director, Office of Marine Mammals and Endangered Species, is designated as the program manager of the marine mammal program. He is responsible for recommending and implementing program policies and procedures, administering the endangered species program for the marine mammals that are listed as "endangered or threatened," 1/ developing and maintaining a marine mammal permit system, and achieving all other MMPA program goals and objectives.

Within FWS, the Associate Director, Federal Assistance, and the Associate Director, Wildlife Resources, share responsibility for administering the marine mammal program.

The Associate Director, Federal Assistance, is responsible for marine mammal species that are listed as endangered or threatened (the California sea otter, marine otter, dugong, and manatee) under the Endangered Species Act (ESA) of 1973. The Associate Director, Wildlife Resources, is responsible for marine mammal species that are not currently endangered or threatened (the polar bear, walrus, and Alaska sea otter).

1/Under the Endangered Species Act of 1973, an endangered species is any species which is in danger of extinction throughout all or a significant portion of its range. A threatened species is any species which is likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

The marine mammal program interfaces with many of FWS' organizational units. Of primary importance to marine mammals are (1) the Office of Endangered Species, which has specific responsibility for managing endangered or threatened species, (2) the Division of Wildlife Management, which has specific responsibility for managing marine mammal species not listed as endangered or threatened, (3) the Division of Law Enforcement, which controls importing, exporting, and taking of marine mammal species and other species and is responsible for enforcing the protective provisions of MMPA and ESA, (4) the Federal Wildlife Permit Office, which issues permits for the taking of those marine mammals under FWS jurisdiction, and (5) the Marine Mammal Section of the Wildlife Research Center in Denver, Colorado, which conducts marine mammal research.

We were told in December 1980 that FWS plans some organizational changes to improve its management of marine mammals, including the probable creation of an Office of Marine Mammals (see p. 52).

THE MARINE MAMMAL COMMISSION

MMC is responsible for reviewing Federal activities affecting marine mammals. While not a regulatory agency, MMC is responsible for making recommendations to the Congress and Federal agencies to enhance the conservation and protection of marine mammals and to insure compliance with MMPA's policies. In carrying out their responsibilities under the provisions of MMPA, both FWS and NMFS are required to consult with MMC, an independent advisory entity MMPA established.

Composed of three Commissioners and an executive staff, MMC is supported by a nine member Committee of Scientific Advisors on Marine Mammals (see app. VIII).

The Congress, in establishing MMC, set forth in MMPA specific responsibilities for MMC. These responsibilities include:

--Undertaking a review and study of U.S. activities pursuant to existing laws and international conventions relating to marine mammals, including, but not limited to, the International Convention for the Regulation of Whaling, the Whaling Convention Act of 1949, the Interim Convention on the Conservation of North Pacific Fur Seals, and the Fur Seal Act of 1966.

--Conducting a continuing review of the condition of the stocks of marine mammals, methods for their protection and conservation, humane means of taking marine mammals, research programs conducted or proposed to be conducted under the authority of MMPA, and all applications for permits for scientific research.

--Undertaking or causing to be undertaken other studies MMC deems necessary or desirable that are connected with its assigned duties concerning the protection and conservation of marine mammals.

--Recommending to the Secretaries of the Interior and Commerce and to other Federal officials such steps MMC deems necessary or desirable to protect and conserve marine mammals.

--Recommending to the Secretary of State appropriate policies regarding existing international agreements for protecting and conserving marine mammals and suggesting appropriate international agreements for protecting and conserving marine mammals.

--Recommending to the Secretary of the Interior such revisions to the endangered species list and threatened species list as may be appropriate regarding marine mammals.

--Recommending to the Secretaries, other appropriate Federal officials, and the Congress such additional measures it deems necessary or desirable to further MMPA policies, including provisions that protect Indians, Eskimos, and Aleuts whose livelihoods may be adversely affected by actions taken pursuant to MMPA.

MARINE MAMMAL MANAGEMENT UNDER MMPA

The policy, program objectives, and management standards MMPA established represent a drastic departure from the scheme of wildlife regulations that had previously existed. Most wildlife have generally been managed under the principle of "maximum sustained yield" which is a standard that focuses solely on the effects of a given level of harvest and the harvested species ability to replenish itself without regard to species interactions in the ecosystem as a whole. MMPA, however, requires that management be approached from a multispecies ecosystem perspective and recognizes the esthetic, recreational, and commercial values of marine mammals. The Congress, in enacting MMPA, provided that the primary objective of marine mammal management should be to maintain the

health and stability of the entire marine ecosystem and not just one or more marine species. The congressional declaration of policy in MMPA states that:

> "* * * species and population stocks should not be permitted to diminish beyond the point at which they cease to be a significant functioning element in the ecosystem of which they are a part * * *."
>
> * * * * *
>
> "* * * the primary objective of their management should be to maintain the health and stability of the marine ecosystem. Whenever consistent with this primary objective, it should be the goal to obtain an optimum sustainable population [1/] keeping in mind the optimum carrying capacity [2/] of the habitat."

To accomplish a comprehensive marine mammal management system, MMPA provides a scientific research program, including but not limited to population census studies. MMPA also establishes activities to be undertaken as part of program administration. These activities include

--a process for waiving the moratorium to allow taking and importing,

--regulations on taking of marine mammals,

--a permit process,

--a law enforcement process,

--an international program,

--Federal cooperation with States,

1/"Optimum sustainable population"--the number of animals which will result in the maximum productivity of a population stock or a species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element.

2/"Optimum carrying capacity"--the ability of a given habitat to support the optimum sustainable population of a species or population stock in a healthy state without diminishing the habitat's ability to continue the function.

--marine mammal research grants, and

--establishing a Marine Mammal Commission.

FEDERAL FUNDING FOR MARINE MAMMAL MANAGEMENT

Federal funding for marine mammal related activities undertaken by MMC, NMFS, and FWS derives basically from appropriations under MMPA and ESA.

For fiscal years 1979 and 1980, MMPA funding was as follows:

	FY 1979	FY 1980
	(000)	(000)
MMC	$ 702	$ 940
NMFS	7,337	7,823
FWS	2,000	2,000

For fiscal years 1979 and 1980, ESA funding for marine mammals was as follows:

	FY 1979	FY 1980
	(000)	(000)
MMC	a/$ -	$ -
NMFS	1,542	1,551
FWS	b/317	397

a/MMC receives no ESA appropriations.

b/FWS received ESA appropriations (totaling $18,869,000 and $21,891,000 in fiscal years 1979 and 1980, respectively) for several hundred listed species. FWS was able to provide only approximate totals because data on exact marine mammal related expenditures incurred for such things as consultations, administrative time, and some law enforcement activities is not readily available.

FEDERAL FUNDING FOR MARINE MAMMAL RESEARCH

MMPA specifies research and study responsibilities for Commerce, the Interior, and MMC. MMPA also authorizes the Secretaries of Commerce and the Interior to make grants or financial assistance in such other forms as appropriate, after review by MMC, to States, other Federal agencies,

public or private groups, and other persons for the purpose of researching areas relevant to protecting and conserving marine mammals.

In addition to research authorized by MMPA, Commerce and the Interior and other Federal agencies carry out marine mammal related research through Federal funding provided by other authorities, such as ESA, and programs, such as the Outer Continental Shelf Environmental Assessment Program.

MMPA requires MMC to conduct a continuing review of research programs conducted or proposed to be conducted under MMPA's authority and to undertake or cause to be undertaken such other studies as it deems desirable for marine mammal protection and conservation. To accomplish this, MMC (1) conducts an annual survey of federally funded marine mammal research programs, (2) reviews the programs, and (3) recommends measures that should be taken to eliminate duplication and other problems.

According to information submitted by Federal agencies to MMC for fiscal years 1970 through 1979, 21 Federal departments and agencies funded almost 1,000 projects related to marine mammals. Federal funding for marine mammal research has increased significantly in the last few years--from $6.2 million in fiscal year 1975 to $16.7 million in fiscal year 1979. Funding increases were largely attributable to increased investment by the Interior's Bureau of Land Management (BLM) in its programs associated with offshore oil and gas exploration and exploitation, NMFS in its tuna-porpoise program, and NMFS and BLM in their cooperative bowhead whale research program.

In fiscal year 1979, 17 Federal agencies funded marine mammal research programs. The key agencies were Commerce and the Interior which spent $4,493,900 and $8,975,600, respectively. (For a summary of the amounts expended by 20 Federal departments and agencies for fiscal years 1978 and 1979, see appendix IX.)

In analyzing fiscal year 1979's survey information, MMC, in its "Annual Report of the Marine Mammal Commission, Calendar Year 1979," concluded that it was clear that several programs could be integrated, coordinated, refocused, and, as necessary, expanded or diminished to meet information needs more economically. For example, MMC suggested that a better program and substantial cost savings might be realized by integrating NMFS and BLM bowhead whale research programs. MMC also called for expanded research

efforts to facilitate recovery of the West Indian manatee, Hawaiian monk seal, and California sea otter.

MMC has advised the appropriate agencies of duplication and other identified problems and has recommended measures to be taken to eliminate duplication and correct these problems.

OTHER FEDERAL LAWS AFFECTING MARINE MAMMALS

In addition to MMPA, several other laws significantly affect the conservation, management, and protection of marine mammals. These include the

--Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.),

--Magnuson Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 et seq.), and

--Title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.).

ESA was enacted to provide a program for the conservation and protection of plants, fish, and wildlife, including marine mammals, that are threatened with or in danger of extinction. ESA prohibits taking, importing, exporting, processing, or transporting endangered and threatened species.

Under ESA, the Secretaries of Commerce and the Interior are required to

--determine which species under their respective jurisdictions are threatened or endangered,

--determine the geographical areas of critical habitats that are essential to conserving and protecting threatened or endangered species, and

--consult with other Federal departments to ensure that their actions do not jeopardize the continued existence of endangered or threatened species or their habitats.

The Magnuson Fishery Conservation and Management Act (FCMA) was enacted to establish a framework for managing fishing resources within a designated (200 mile) conservation zone of the U.S. coastline. FCMA regulates fishing to prevent overfishing and depletion of fish populations.

This is accomplished by forming regional fishery management councils composed of Federal, State, and private sector personnel and developing fishery management plans that include conservation and management measures to prevent overfishing while achieving "optimum yield" 1/ from each fishery.

Title III of the Marine Protection, Research, and Sanctuaries Act authorizes the Secretary of Commerce to take appropriate action to protect the marine environment in certain areas of ocean and coastal waters by designating them as marine sanctuaries. This act provides that the Secretary may designate as marine sanctuaries areas he determines should be preserved or restored for their conservation, recreational, ecological, or esthetic values. These could include sanctuaries that would protect marine mammals.

PRIOR GAO REPORTS

We have issued the following reports pertaining to legislation affecting conservation, management, and protection of marine mammals.

--"Endangered Species--A Controversial Issue Needing Resolution," CED-79-65, July 2, 1979 (ESA).

--"Progress and Problems of Fisheries Management Under the Fishery Conservation and Management Act," CED-79-23, Jan. 9, 1979 (FCMA).

In the first report we concluded that the Interior must improve its management of the endangered species program to provide greater protection to endangered and threatened species while minimizing their impact on Federal, State, and private projects and programs. We recommended that the Interior improve the process used to

--list species as endangered or threatened,

1/Optimum yield means the amount of fish that will provide the greatest overall benefit to the Nation, particularly for food production and recreation, and that is determined on the basis of the maximum sustainable yield, modified by relevant economic, social, or ecological factors. Maximum sustainable yield is the scientific term describing the yield which is achieved when the annual catch from a fishery is at the highest level which can be sustained without harming the reproductive ability of the stock in question and which assures a similar level of harvest in the next year.

--consult with other Federal agencies on the impact their projects and programs may have on endangered and threatened species, and

--return listed species to a point where they are no longer endangered or threatened.

We also recommended that the Congress clarify and revise ESA to improve its effectiveness.

In the latter report, responding to a joint request from the House Committee on Merchant Marine and Fisheries and its Subcommittee on Fisheries and Wildlife Conservation and the Environment, we assessed progress and problems in fisheries management under FCMA, emphasizing the activities of the regional fisheries management councils. The report addresses the progress made and the problems encountered in carrying out FCMA and includes detailed information on the activities of each of the five councils we reviewed. The report recommends that the Secretary of Commerce:

--Support NMFS' biological, social, and economic data collection plans to assure that the data necessary for effective fisheries management is provided.

--Monitor the extent to which jurisdictional problems impede fishery management plan implementation.

--Direct the Assistant Administrator for Fisheries to assist the councils in developing long-range plans for fisheries management which include measurable short- and long-range biological, social, and economic goals.

OBJECTIVES, SCOPE, AND METHODOLOGY

We did not evaluate the overall effectiveness of MMPA. The purpose of this review was to assess the operations of MMC, which has overall responsibility for reviewing and coordinating all activities affecting marine mammal management from a Federal standpoint, and to evaluate the marine mammal management programs of the two main Federal regulatory agencies (Commerce and the Interior) to ascertain how such operations and activities relate to the overall Federal effort to protect marine mammals.

We recognized the basic concerns expressed by Congressman Dingell's office relative to the agencies' actual role as well as the level and type of coordination and cooperation that exists between the Federal and the Federal/State agencies. We reviewed such issues as:

--How effective are the procedures and processes for granting States a waiver of the MMPA moratorium on the taking of marine mammals and returning management to the States?

--What procedures have been established to coordinate the day-to-day functions and the long-term duties such as research between all interested agencies and parties?

--What role does MMC actually have in overseeing the activities of the regulatory agencies and making recommendations and suggestions pursuant to the Federal Government's concern for protecting marine mammals?

--What has been the response and/or reaction of the regulatory agencies to MMC's recommendations?

--To what extent, if any, have the conflicts between certain legislation (FCMA and MMPA) affected the successful accomplishment of the marine mammal goals and objectives?

--Are any legislative modifications and/or changes necessary to help accomplish the Federal Government's goals to protect marine mammals?

To obtain a comprehensive picture of Federal management, we selected five separate species of marine mammals for our review:

--the walrus,

--the bowhead whale,

--the West Indian manatee,

--the Hawaiian monk seal, and

--the California sea otter.

These species were selected because they provided an opportunity for us to review MMC's activities and the two regulatory agencies' management. Three species were under the Interior's jurisdiction (the walrus, manatee, and sea otter), and two were under Commerce's jurisdiction (the bowhead whale and monk seal). Three of these species--the manatee, monk seal, and bowhead whale--ranked high on the list of marine mammals requiring priority attention by the Federal Government because they were among the most endangered of

all species and might possibly become extinct in the near future.

We did not evaluate the overall effectiveness of the Federal marine mammal research program, but did note and identify examples of duplicative and overlapping research as it pertained to the species we looked at and was noted by MMC in carrying out its responsibilities.

We reviewed MMC's policies and procedures and examined pertinent legislation, documents, reports, and records relating to marine mammal activities, including MMC's role in reviewing marine mammal management. In addition to interviewing MMC officials, we discussed with Commerce and Interior officials their activities, procedures, and actions relative to the protection and conservation of species we selected.

In Commerce we met with the Director and Deputy Director of NMFS' Office of Marine Mammals and Endangered Species and discussed their MMPA and ESA responsibilities and current and planned efforts to protect and recover the bowhead whale and Hawaiian monk seal.

In the Interior we met with the Associate Director and Deputy Associate Director, Federal Assistance, who are responsible for the Interior's Office of Endangered Species which manages marine mammals and other species that are listed as endangered or threatened under ESA. We discussed with these officials their MMPA and ESA activities relating to progress, accomplishments, and problems in recovering the West Indian manatee and California sea otter. We also met with a Deputy Associate Director, Wildlife Resources, and discussed the Interior's efforts to implement MMPA and manage the walrus and the Interior's proposed plans to establish a single, high-level office to give marine mammal management a more prominent position in FWS. In addition, we met with the Interior's Marine Mammal Coordinator and discussed coordination of the Interior's marine mammal and endangered species programs.

We also visited NMFS and FWS field offices and discussed marine mammal management and issues. For example, we met with a FWS field supervisor and the FWS sea otter coordinator in Sacramento, California, to discuss efforts to prepare a sea otter recovery plan and to coordinate with Federal, State, and other concerned organizations. We also discussed marine mammal management and issues with State and other concerned organizations in Alaska, California, Florida, and Hawaii.

In addition, we attended several MMC meetings, including a 3-day session in February 1980 at which numerous Federal, State, and other representatives and groups discussed issues relating to marine mammals we selected for review.

We wrote to the Director, FWS, on March 24, 1980, and requested information on FWS' responses to MMC's recommendations and any other actions FWS has taken as a result of such recommendations. We also wrote to NOAA's Assistant Administrator for Fisheries and requested information on NMFS' responses to MMC's recommendations and any other action NMFS has taken on such recommendations. In addition, we wrote to the Executive Director, MMC, requesting information on MMC actions taken in cases where the agencies had not responded to its recommendations. The information we obtained from the Interior, Commerce, and MMC was used in completing our evaluation of the Federal/State management of the species we selected for review.

CHAPTER 2

NEED FOR IMPROVED FEDERAL MANAGEMENT AND COORDINATION OF THE MARINE MAMMAL PROGRAM

The marine mammal program has been effective in establishing a number of important steps and significant measures to help accomplish the Federal Government's goals to protect and conserve marine mammals. However, progress has been slow and a number of improvements are needed.

Each of the five species of marine mammals we reviewed presents a unique set of circumstances requiring specific but diverse Federal management action.

MMC and its Committee of Scientific Advisors have played an active and constructive role in carrying out their responsibilities under MMPA. MMC has been instrumental not only in initiating action, such as coordinating research between Federal agencies, but has supported, both administratively as well as financially, a number of projects and activities pursuant to developing suitable management plans for marine mammals.

FWS' efforts to manage certain species, such as the manatee, have been slow. In recent months, however, improvements have been made by FWS and, if continued, should help in developing a suitable marine mammal program. Regarding NMFS' activities and program, a more direct and concerted effort is being made concerning marine mammal management than at FWS. However, NMFS does not have as large an endangered species management responsibility as FWS. Nevertheless, improvements are needed by both agencies to more effectively meet program goals.

In addition to identifying management improvements that are needed, we also believe that management of marine mammals can be improved if MMPA is amended to allow management action before a species becomes depleted and if certain management control terms (e.g., wasteful, subsistence, handicrafts) used with the taking of marine mammals by Natives are clarified.

THE WALRUS--AN ABUNDANT SPECIES

The current population of the walrus (see p. 17), estimated at 250,000 according to joint American and Russian surveys, is considered by some to be larger than its environment can effectively support. One of MMPA's goals is to maintain marine mammals at, or to increase them to, their optimum sustainable population, while maintaining the health and stability of the species' environment or habitat.

Source: U. S. Fish and Wildlife Service

BULL WALRUS

According to State of Alaska officials, there has been an unhealthy and environmentally destabilizing increase in the walrus population since MMPA was passed in 1972. The Commissioner, Alaska Department of Fish and Game, informed us that the walrus population was at an optimal level from 1970 to 1973 but has continued to increase above that level since then. The State believes that if the surf clam fishery is developed (as proposed for the Bristol Bay area of the Bering Sea), it would jeopardize the walrus herd, rather than the walruses jeopardizing the fishery. The State said that this is especially true now that food reserves of walruses in other parts of their range appear to be significantly reduced as indicated by greater numbers of animals in poor physical condition.

Extensive delays in the process of returning marine mammal management to the State of Alaska; exemption of subsistence hunting by Alaska Natives from MMPA regulations; the inability of Federal agencies to exercise certain management controls before a species becomes depleted; the lack of an effective Federal enforcement program; and the need to clarify certain MMPA terms, such as subsistence and wasteful, have impeded implementing an effective marine mammal program to manage and control the walrus within its environmental limitations.

Further, management of the walrus points up certain problems concerning the basic conflict between MMPA and FCMA and split jurisdiction of marine management responsibility between Federal agencies. (See ch. 3.)

Return of walrus management to the State of Alaska

The walrus population before exploitation by commercial hunters was estimated at 200,000. Commercial hunters began hunting walrus around 1860 and continued until the early part of this century. It was estimated that the population was reduced to 50,000 in the 1930s, and that it was between 40,000 and 50,000 in the early 1950s.

Alaska began to manage the walrus in 1959. By 1972 the population was about 135,000. Between 1972 and 1976 management of the walrus was under the Federal Government. It was transferred to the State in 1976 and returned to the Federal Government in 1979. During this period (1972-79), the population rose to an estimated 250,000 which is viewed by the State and others to be larger than the optimal population level that its environment can support on a long-term basis.

Although these population levels for the walrus may not be totally reliable, they are the result of joint American and Russian surveys and other population studies which represent the best statistics available.

On January 31, 1973, Alaska requested the Secretaries of Commerce and the Interior to grant a waiver of the moratorium on the hunting of nine species of marine mammals and return management of the species (which included the walrus) to the State. Six of the species were under Commerce's jurisdiction and three--the walrus, polar bear, and sea otter--were under the Interior's jurisdiction.

Long delays in the proceedings regarding this request and disputes and disagreements between the parties involved impaired Federal efforts to respond in a timely manner. Management of the walrus was, for a time, returned to the State; however, many of the basic issues associated with this request, such as fishery conflicts and the adverse impact that the large walrus population may be having on the marine ecosystem, remained unresolved at the end of 1980--some 8 years after the State's request.

For example, State of Alaska officials stated that if commercial fish species are managed so as to achieve the FCMA goal of optimum sustainable yield, the food supply for marine mammals would be reduced so that MMPA's goal of optimum sustainable population could not be achieved. On the other hand, they noted that, if the marine mammal population was allowed to increase to the optimum sustainable population goal, the commercial fisheries harvest would be reduced--arguably conflicting with FCMA's goal. (See p. 83.)

Delays associated with the State's request included:

--The State's request sought a waiver as well as a return of management for nine species of marine mammals and, as a result, required formal hearings before an administrative law judge on the status of the populations and effects of proposed takings as well as consideration of the State's proposed laws and regulations that would govern such taking.

--MMPA requires that decisions on the waiver be based on the record from a formal hearing.

--The proposed waiver of the moratorium to allow taking of marine mammals required compliance with the provisions of the National Environmental Policy Act.

--The State's request was the first such request under MMPA and neither Federal nor State officials were yet familiar with the procedural or substantive requirements of MMPA or the National Environmental Policy Act. Also, many Federal officials and the public were unfamiliar with the nature and extent of the complex and difficult marine mammal management issues in Alaska.

Split Federal jurisdiction, as in other areas of Federal management of marine mammals such as enforcement and research, compounded the problems associated with responding to and acting upon the State's request. Because issues affecting the management of the walrus were somewhat unique, as compared to most of the other marine mammals included in the State's request, and involved factors such as Native subsistence and sport hunting, the walrus was handled separately from the other species.

In December 1975--about 3 years after the State's request--the return of management of the walrus was conditionally approved by the Director, FWS. After the State made some changes in its laws and regulations affecting the management of the walrus, the final FWS approval was granted in April 1976.

Public hearings, as required under MMPA, were held in June, July, and October 1976 to discuss returning management of the other eight species to the State. In June 1977 the Administrative Law Judge who conducted the hearings recommended to NMFS and FWS that management be returned to the State.

About 6 months later, in December 1977, MMC requested an explanation from FWS and NMFS as to the reasons for their delay in reaching a decision regarding the return of management to the State. In January 1978 the agencies said the delay was caused because changes had to be made in the final environmental impact statement on the State's request. In June 1978 MMC again expressed concern about the lack of action by these two agencies. In September 1978 FWS and NMFS said a decision would be made on the State's request in early 1979.

In January 1979, about 6 years after the State's request and about 1-1/2 years after the Administrative Law Judge had recommended returning management to the State, FWS and NMFS agreed, under certain conditions, to return management of the other eight species to the State. Alaska disagreed with some conditions, including FWS' definition of optimum sustainable population which the State believed could be misinterpreted as maintaining marine mammals at maximum population levels. The State, however, said it would work with Federal officials to resolve whatever problems there were and to arrive at a mutually acceptable solution.

The Alaska Natives challenged in court the authority of FWS' Director to delegate to the State the authority to regulate Native taking of walrus. The court ruled that the "native exemption" clause of MMPA, which constituted a congressionally mandated permit that allows Alaska Natives to hunt "non-depleted" species (walrus, in a "non-wasteful" manner for "subsistence" and "native handicraft" purposes,

preempted any inconsistent State legislation or regulation. 1/ This ruling meant that the State could not, as it had been doing, limit or set quotas on the number of walrus the Natives killed.

The State, which had earlier established quotas for both the Natives and non-Natives as a Federal requirement for the waiver, objected to the propriety of having two different management programs for two different groups--Natives and non-Natives. The State further advised FWS that, under these circumstances, it would return management of the walrus to the Federal Government in July 1979.

The Alaska Area Director, FWS, told us in April 1980 that the State's rejection of walrus management caught FWS by surprise. As a result, FWS was just beginning to establish--some 8 years after MMPA--a walrus management program and planned to spend about $300,000 for walrus management in Alaska in fiscal year 1980.

The State later said that, if FWS was, in fact, surprised by Alaska's rejection of walrus management, then FWS was totally uninformed about basic issues such as the constitution of the State in which it is attempting to manage wildlife, disregarded the history of the State's wildlife management program, and was not aware of the various privileges accorded Alaskan citizens based on need rather than strictly ethnic consideration.

The Commissioner, Alaska Department of Fish and Game, told us in May 1980 that the State still would like to manage the marine mammals but, after the Togiak decision which permits Native subsistence hunting without regulation, the State had decided to give up on the matter. He also added that to again initiate action, at this late date, would mean that the entire formal review process, including all the hearings, would have to be repeated.

In July 1978 the Governor of Alaska wrote to NOAA's Administrator and said the State had spent millions of dollars on its request that management be returned to the State in the 5-1/2 years that it had the request before FWS and NMFS. He said that during this time no management program had emerged and asked that the highest priority possible be given to the State's request so that management of the species could once more be resumed.

Delays in reaching agreement on the return of management to the State have been costly. For example, the Alaska Department of Fish and Game estimated that, for fiscal years 1972

1/People of Togiak v. United States, No. 77-0264, (D.D.C. Apr. 3, 1979, and Jan. 29, 1980).

through 1977, it spent about $250,000 on the request review process. This represented about 40 percent of the Department's funds which were originally earmarked for marine mammal research and to gather certain management data and information.

The State, in its June 1979 letter advising FWS that it was terminating management of the walrus, stated that

> "* * * the present legal, political, and bureaucratic environment has created conflicts and confusion that make the management situation intolerable."

The State also objected to the inability to manage or control the Native harvest of marine mammals. (See p. 23.)

Besides being costly and time consuming, the return of management delays and problems certainly have not helped Federal-State relations. For example, in a June 4, 1979, letter, the Alaska Department of Fish and Game stated:

> "The Act itself can be heralded for its significant contribution to deteriorating State-Federal relationships in the arena of fish and wildlife management. One can hardly blame the State for being bitter after being subjected rather callously to the worst kind of bureaucratic red tape--all under the guise of resource conservation."

Such feelings have adversely affected Federal-State relations in the area of marine mammal law enforcement. For example, FWS officials in Alaska stated that law enforcement cooperation between the State and the Federal Government ceased in August 1979 when the State refused to cooperate with FWS law enforcement efforts.

Over a year later, in September 1980, the Commissioner, Alaska Department of Fish and Game, wrote NOAA and FWS and pointed out that no significant action had taken place on the State's request for return of management since the summer of 1979 and that no definite resolution of the State's concerns or agreement with FWS had been achieved. He said, in the meanwhile, the marine mammal management problem was getting worse and there was no comprehensive management plan for the marine mammal species of greatest concern to the State. The Commissioner said data is needed, for example, to evaluate potential Outer Continental Shelf development impacts, prepare fishery management plans, protect subsistence use, and mitigate commercial fishery/marine mammal conflicts.

He said the present "no action" posture could no longer be continued and the State was willing to again resume negotiations with FWS to establish a meaningful and efficient management and research program. He pointed out, however,

that the State was dubious about the success of such efforts--based on the last 7 years of its experience--and would ultimately have to seek relief through amendments to MMPA.

We recognize that the State's request was the first received and that neither Federal nor State officials were familiar with the procedures required under the relevant legislation. However, based on the above, it is apparent that there were delays and a lack of appropriate action by both NMFS and FWS in acting on the State's request and taking measures to resolve basic points of conflict between the parties involved.

As of December 1980, most of the issues concerning the State's request remained unresolved.

It should also be noted that during the period between 1973 and 1976--when the State was awaiting approval of its request to have management of the walrus returned--FWS did little to manage the walrus, anticipating that the State would soon regain management control. Therefore, for a period of about 4 years after MMPA was passed there was neither Federal nor State management of the walrus. During this period, conflicts regarding the status of the population, Native hunting, and fishery/marine mammal disputes grew progressively worse.

Unregulated Native subsistence hunting of nondepleted species impedes effective management

The primary objective of marine mammal management under MMPA is to maintain the health and stability of the marine ecosystem and, whenever consistent with this objective, obtain and maintain marine mammals at optimum sustainable population levels. MMPA allows unregulated hunting by Natives of marine mammals for subsistence purposes or for making handicrafts or clothing for sale as long as it is not done in a wasteful manner and the particular species is not classified as depleted. The walrus is not so classified, and a number of people believe that the population has increased so rapidly that it is approaching or exceeding the carrying capacity of its habitat. Although MMC and FWS are uncertain as to whether the walrus population has exceeded the carrying capacity of its habitat, there is general agreement that the walrus population is in the upper portion of the range of optimum sustainable population levels and certainly not depleted.

Because MMPA allows unregulated subsistence hunting for walrus, effective management efforts are impeded. As previously stated, the State's walrus program, which FWS had approved, included limits in the form of quotas and other necessary regulatory measures that applied to Natives as well as non-Natives. This changed, however, after the court ruled in April 1979 and January 1980 that under MMPA

the State could not regulate Native subsistence hunting as long as it was not done in a wasteful manner and the population was not classified as depleted. Under these conditions, the agency charged with marine mammal management responsibility, be it a Federal or State agency, is precluded from exercising or establishing regulations and control measures over Native hunting other than those designed to ensure that the taking is for subsistence and handicraft purposes and is not conducted in a wasteful manner. As a result, several elements of an effective management program are impeded or entirely precluded.

Controls on the total number of animals that may be taken as well as limits by age, sex, reproductive condition, location, and season cannot be imposed so as to ensure that the populations will remain at optimum sustainable population levels and prevent them from becoming depleted. Efforts to monitor the harvest so as to determine the total number of animals taken and their location and to collect biological samples from harvested animals are frustrated. Also, as long as the total number of animals that may be taken is unregulated and therefore not predictable, it is impossible to allocate any portion of the biologically acceptable harvest to non-Natives for legitimate commercial or sport taking since the combination of unregulated Native subsistence taking and such commercial or sport hunting could exceed the permissible level.

These elements of effective management are important not only in the overall management of the species relative to the basic objectives of MMPA--maintaining a species at an optimum level in concert with the carrying capacity of the environment--but also in helping to reduce conflicts that may arise or already exist at the local level between the various interest groups, that is, fisheries, environmentalists, Natives, etc. Also, the ability to exercise or implement certain regulatory measures may help prevent a particular species that is currently not depleted from ultimately becoming depleted. Once a species is classified as depleted, Native take may be regulated under MMPA.

We discussed this situation with Federal and State marine mammal management officials who agreed that some provision should be made in MMPA to allow, under certain conditions, regulatory measures on the hunting of a species by Natives prior to its becoming depleted or before irreparable damage is done to the marine environment.

Concerning the walrus harvest, virtually all hunting is done by the Natives. Since MMPA was passed in 1972, the number of walrus that the Natives killed has increased significantly. From 1959 through 1971, an average of about 3,300 was taken each year. The current number taken is estimated at 10,000 a year.

After management responsibility for the walrus was returned to the Federal Government in 1979 and the moratorium on the taking of marine mammals was reinstated, except for the Native subsistence take, MMC said there was a need to monitor the Native walrus harvest. In October 1979 MMC recommended to FWS that appropriate arrangements (logistical and funding) be made to establish a monitoring program. MMC further advised FWS to explore the feasibility of providing funds to the Eskimo Walrus Commission to design and conduct the program in consultation with the State of Alaska. Although FWS is unable to exercise any type of regulations or limitations on the Native harvest, this monitoring effort would, as a minimum, provide FWS essential management data on the status and condition of the walrus population.

In January 1980 FWS told MMC that, in line with its recommendation, FWS was providing $110,000 to the Eskimo Walrus Commission to set up a monitoring system for the 1980 Native harvest.

The Eskimo Walrus Commission, which was established in 1978 to represent the walrus hunting villages and to aid State and Federal agencies in their attempts to develop a suitable walrus management plan, recognized the need for some type of regulations or limitations on Native hunting. In April 1979 it proposed a number of steps to improve walrus management. Although the Walrus Commission did not agree that an established numerical quota should be imposed on the Natives, it, nevertheless, did believe that a flexible harvest limit should be established based on the status and condition of the walrus population at the time. It said it was willing to cooperate and assist the responsible government agency in setting up a suitable management plan, which should also help to insure that the walrus does not become depleted. In July 1979 the Walrus Commission proposed to the Interior that a cooperative management agreement be established for

--regulating the sale of raw ivory,

--regulating Native walrus hunting (limits on take and hunting methods), and

--establishing a recommended average annual harvest quota.

FWS told us that discussions are underway with the Walrus Commission on the recommendations but FWS will take no final action until better data, such as census data and overall health information, on the walrus herds is available.

In discussing the status of the walrus population and related management matters with the Director, Alaska Department of Fish and Game, we were advised that, because the walrus population is so large, not having a quota or limit on Native hunting would not, at this time, present a serious problem in so far as the size of the walrus population is concerned. From another perspective, however, there are conditions, such as the uncertainty of Native take (age, sex, location, etc.) and the apparent limits on the food supply for the walrus, that warrant management attention and direction. Along these lines, the State advised FWS in March 1979 that:

> "We are now faced with a potential tragedy: that the population will greatly exceed carrying capacity, be subjected to undue suffering and mortality, significantly reduce the carrying capacity of its habitat and crash to a significantly lower level. The walruses, their habitat and the coastal residents of Alaska will suffer as a result."

A University of Alaska marine mammal researcher, in expressing his views on FWS regulations in a March 1979 letter to MMC, pointed out that "* * * current indications are of overpopulation and impending 'crash' of the walrus population, which seems to have been protected to death already."

MMC, in addition to suggesting that FWS fund a program with the Eskimo Walrus Commission to monitor the Native harvest, also pointed out that the broader and more difficult walrus management issues warranted the attention of FWS and others involved and that some fundamental decisions must be made to resolve the problems relating to the walrus in Alaska. To help accomplish these objectives, MMC suggested to FWS that it convene a meeting of interested persons in Alaska to discuss these issues frankly and in sufficient detail to provide a basis for decisions that must be made and actions that must be taken.

Responding to MMC's recommendations, FWS established in 1980, an ad hoc group composed of State, FWS, Walrus Commission, and Native representatives to discuss the walrus. FWS is drafting a walrus management plan which it estimates will be completed by mid-1981. The ad hoc group is providing input to the plan.

FWS' action on the January 1979 decision to waive the moratorium and return management of the other species to the State has been deferred until questions relating to the Native exemption have been resolved. We discussed the

status of this effort with FWS in December 1980. FWS said that no further action is planned and that it is up to the State to "accept the Native exemption."

In commenting on this in a March 6, 1981, letter (see app. IV), the Commissioner, Alaska Department of Fish and Game, said that FWS' position shows a willingness on the part of FWS to continue to allow the management program to deteriorate and, even in view of the severe Federal budget cuts and Federal austerity programs, to attempt to duplicate costly programs which the State is ready, willing, and able to fund and carry forward. He also said that all that would be required to involve the State are realistic Federal guidelines which actually permit implementation of a conservation program that applies to Alaskan citizens based on resource dependency and use.

Federal enforcement of MMPA needs to be improved

On June 27, 1979, the Alaskan Board of Game terminated the State's walrus management and law enforcement activities pursuant to the State's decision that walrus management is to be returned to the Federal Government. In July 1979 such management reverted to Federal control and there was no longer a State program to control or govern the taking of walrus.

The FWS Director, shortly thereafter, reestablished the moratorium on the taking of walrus by all parties except the Native taking for subsistence purposes.

To ensure compliance with MMPA provisions which call for a moratorium on the taking of marine mammals, FWS needs to have an effective law enforcement program. FWS is responsible for managing and protecting three species--the sea otter, polar bear, and walrus--that cover extensive ocean areas and more than 34,000 miles of coastline. FWS officials stated that FWS' enforcement program is virtually nonexistent.

Some people believe that the walrus population exceeds the carrying capacity of the environment and may be causing damage and destruction to its marine ecosystem. Therefore, from this perspective there is no need for an enforcement program to limit or control the number killed. However, effective marine mammal management, in line with MMPA's primary purpose and goals, warrants more than just physical control to determine whether numerical quotas have or have not been exceeded. Native taking, for example, must be done only for subsistence purposes or for other approved reasons and accomplished only in a nonwasteful manner. Also, information is needed on the age, sex, and physical and reproductive condition of animals taken.

Further, we understand that there apparently is an increase in the number of walrus being killed for their ivory alone. This poses the question: At what point does such hunting become wasteful under the provisions of MMPA? FWS officials, while readily admitting that they do not have an effective enforcement program, pointed out that enforcement under MMPA is almost impossible because there is no clear understanding of control terms such as wasteful, subsistence, and Native handicraft.

Similarly, NMFS informed us that it has few people and little equipment for marine mammal management and enforcement activities. While neither agency, in our view, has done much to establish an effective marine mammal enforcement program in Alaska, we did, nevertheless, note some examples of overlap between the two agencies. For example, we noted that a FWS enforcement agent will visit a Native village on Native hunting of one species while a NMFS enforcement agent will visit the same village about the same time to check on Native hunting of another species.

We discussed this duplication with FWS and NMFS representatives and were advised that coordination of enforcement activities can and will be assigned. However, they believed that the amount of duplication was not significant.

Conclusions

For the most part, marine mammal interest groups believe that the walrus management problems stem from the large walrus population which is having an adverse impact on the carrying capacity of the marine ecosystem, the unregulated and uncontrolled Native subsistence harvest, and the fishery/marine mammal conflict.

In January 1973 the State of Alaska, desiri..g to continue its management of marine mammals, requested, under the provisions of MMPA, that a waiver of the moratorium on the taking of nine marine mammals (including the walrus) be granted and management be returned to it. Reaching a decision on this request has been a slow process and the end result is that some 8 years after the State s request many of the problems and issues, such as fishery/marine mammal conflicts, remain unresolved. Admittedly, the waiver process is burdensome and, in the case of Alaska's request, was not made any easier with split Federal agency jurisdiction requiring review and formal hearings by two separate agencies. Nevertheless, it appears that, even recognizing such inherent problems, the Federal Government's response to the State's request could have been more timely. Because FWS did little to manage the walrus while the State's request was pending (FWS assumed that the State would soon be granted management control),

the walrus was not managed or controlled by either a Federal or State agency. Federal agencies need to act faster on States' requests for a waiver on the taking of marine mammals and return of management.

Under MMPA, management and control regarding taking by Natives is not permitted unless the species is depleted. Native subsistence harvesting or the taking of nondepleted animals for handicraft purposes is permitted without any regulation as long as it is not done in a wasteful manner. However, we believe that, in line with MMPA's basic goals, objectives, and purposes, certain controls or regulatory measures would be in order to keep the population from becoming depleted rather than waiting until the species is depleted to impose the controls. These measures regarding the Native subsistence harvest would include, among other things, limits on the age, sex, and location of the taking. The Eskimo Walrus Commission, although not agreeing that a specific quota be set on Native subsistence harvesting, did feel that a flexible quota should be set based on the biological condition and status of the walrus population. We believe effective management control warrants amending MMPA to permit the responsible Secretary (Commerce or the Interior) to establish such control features before the population is depleted or the marine environment is severely damaged.

Regarding enforcement of MMPA, FWS has done little to establish a program to ensure that the walrus harvest is taken in accordance with MMPA provisions. We recognize that the amount of control over walrus taking is considered unnecessary by many because the population is so large. However, without an enforcement program, FWS is unable to determine if walruses are being hunted by non-Natives contrary to the moratorium. Certain MMPA terms, such as subsistence and wasteful, are not clear and should be clarified to facilitate effective enforcement.

Recommendations to the Congress

The Congress should amend MMPA to allow the Secretaries of Commerce and the Interior, according to the species being managed, to exercise managerial controls over the Native subsistence harvesting of the species, for example, the walrus, when it appears such steps will help prevent the species' depletion or assist in protecting the marine environment.

This could be accomplished by amending the first sentence of the last paragraph of section 101(b) of MMPA, 16 U.S.C. 1371(b), to read as follows:

> "Notwithstanding the preceding provisions of this subsection, when, under this act [chapter], the Secretary

> determines any species or stock of marine mammal subject to taking by Indians, Aleuts, or Eskimos to be depleted or in danger of becoming depleted, or determines it necessary for the protection of the marine ecosystem, he may prescribe regulations on the taking of such marine mammals by any Indian, Aleut, or Eskimo described in this subsection."

The Congress also should, in connection with the need to establish an appropriate marine mammal enforcement program, amend MMPA to clarify such terms as subsistence, Native handicraft, and wasteful, which are used with limiting or establishing quotas on the harvesting of marine mammals by Natives.

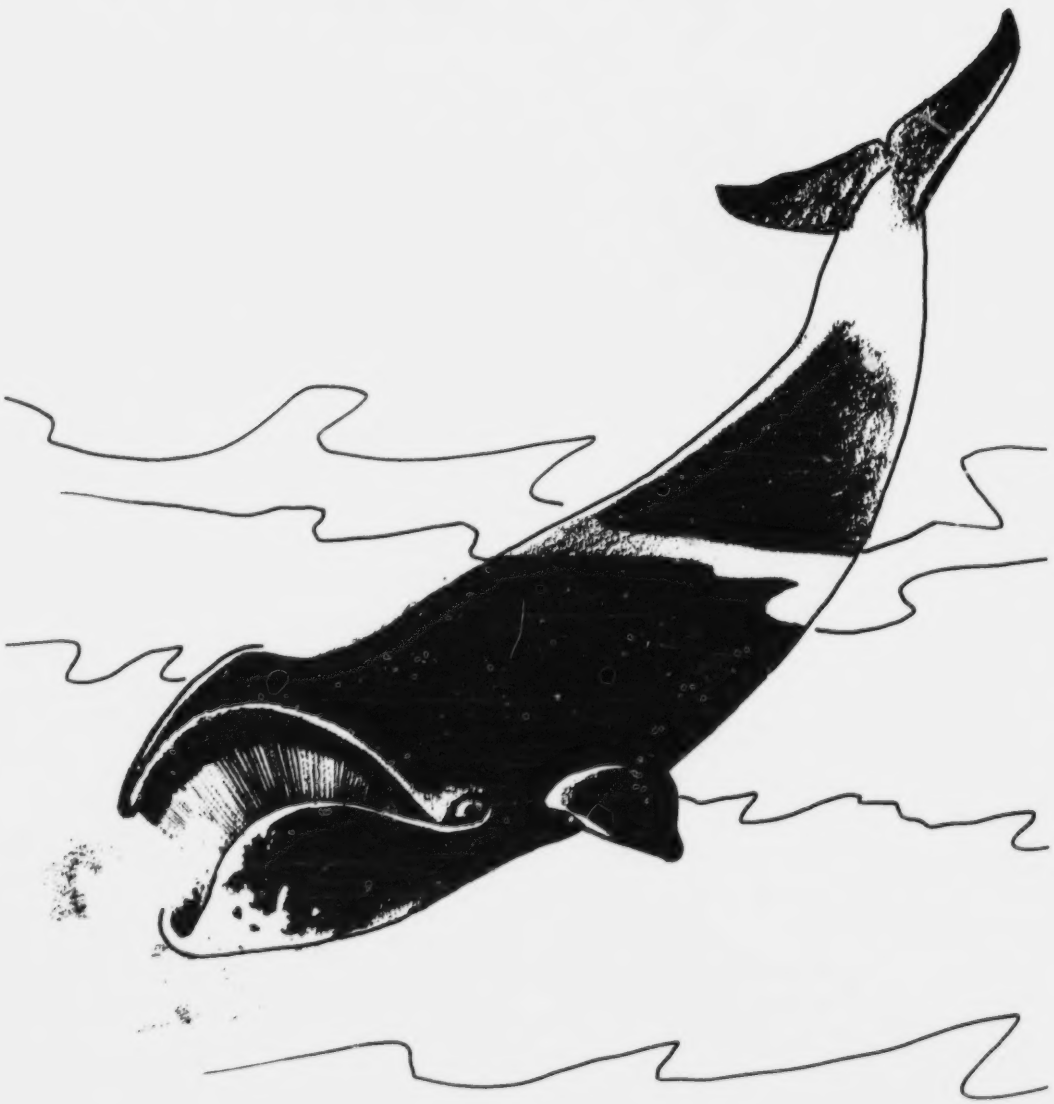
Recommendations to the Secretaries of Commerce and the Interior

The Secretaries of Commerce and the Interior should, in cooperation with State authorities requesting a waiver of the moratorium and a return of management to the States, establish as a high priority, procedures to ensure that the process required to make such determinations is accomplished in an expeditious and responsive manner. Problems that arise with the process should be promptly discussed with appropriate State officials, MMC, and other interested parties to ensure that the time and effort and related costs are kept to a minimum and, more importantly, to help establish an effective marine mammal protection program as MMPA envisioned.

The Secretaries should also establish interagency working arrangements to expedite the waiver review process when States request a waiver and return of management. In addition, the two agencies should coordinate their enforcement programs and other related activities to reduce costs and minimize delays that may occur as a result of the split Federal jurisdiction inherent in the Federal Government's management of marine mammals.

THE BOWHEAD WHALE--A DEPLETED AND ENDANGERED SPECIES

The bowhead whale (see p. 31) has been totally protected from commercial whaling for more than 40 years, first under the 1931 Convention for the Regulation of Whaling and then under the 1946 International Convention for the Regulation of Whaling. More recently, in 1970 the bowhead whale was classified as endangered under the Endangered Species Conservation Act, remained listed as endangered under ESA, and was designated in 1977 as depleted under MMPA. It is generally agreed that the chief concerns that pose serious threats to the recovery and possibly future existence of bowhead whales



Source: National Marine Fisheries Service

SKETCH OF BOWHEAD WHALE

are the Alaskan Eskimo subsistence harvest and impending offshore oil and gas development in the Beaufort Sea, north of Alaska.

It is also generally agreed that overexploitation by commercial whalers some years ago reduced the bowhead population. As is so often the case with marine mammals, population estimates vary. For example, in 1977 NMFS estimated the population at 600 to 1,800 animals. Another NMFS count in 1978 set the population at an estimated 2,264. Eskimo whalers in May 1980 said they believed the population to be between 6,000 and 10,000. Additional 1980 studies, performed by NMFS, supported its 1978 population estimate of 2,264.

NMFS is the Federal agency that has lead responsibility for protecting the bowhead whale. However, the Interior's Bureau of Land Management has responsibility under the Outer Continental Shelf Lands Act for developing information to predict, detect, and mitigate the adverse impacts of Outer Continental Shelf oil and gas development on bowhead whales and their habitat. Under ESA, BLM is required to consult with NMFS concerning the potential adverse impact of those activities. The Interior is also responsible for assessing and documenting the need of the Alaskan Eskimo for a whale harvest. This responsibility has been shared directly by the Under Secretary and the Assistant Secretary for Indian Affairs.

Management and regulation, including the establishment of subsistence take quotas, have been carried out under the auspices of the Whaling Convention Act of 1949. This act implemented domestically the 1946 International Convention for the Regulation of Whaling in the same year that the International Whaling Commission (IWC), which was established by the 1946 Convention, met for the first time. It was the reported increases in the number of bowhead whales killed and/or struck and lost by the Alaskan Eskimos during the mid-1970s that led to increasing concern by IWC over the adverse impact of unregulated Eskimo hunting. This concern, coupled with the lack of suitable data on the status of the bowhead population, led to an IWC ban on the taking of bowhead whales. This ban, which later was the subject of unsuccessful litigation by representatives of the Alaska Eskimo Whalers, was modified to permit, in 1978 and subsequent years, limited quotas for subsistence purposes.

The bowhead whale controversy essentially concerns certain legal and ethical issues and international and domestic efforts relative to providing for the subsistence needs of the Alaskan Eskimos while at the same time protecting an endangered species. Deeply immeshed in this controversy are the actions and activities of the international controlling body--the IWC--and the apparent need for additional information and research data on

the status and trends of the bowhead population and the potential adverse impact of human activities, such as oil and gas exploration and development, in certain locations.

The International Whaling Commission

IWC was established to provide for the "rational exploitation of [whales] under international control." It meets at least annually to carry out the duties specified by the Convention. IWC has specific powers to:

--Adopt regulations regarding the conservation and utilization of whale resources.

--Encourage, recommend, or if necessary, organize studies and investigations relating to whales and whaling.

--Collect and analyze statistical information concerning the current conditions and trend of the whale stocks and the effects of whaling activities.

--Study, appraise, and disseminate information concerning methods of maintaining and increasing the whale population.

The IWC consists of 25 member countries. IWC establishes regulations governing such things as proper whaling procedures and whale-take quotas. Because implementation of the whaling Convention depends upon the voluntary cooperation of the member nations, IWC has virtually no power to enforce its regulations. The effectiveness of IWC has been questioned because member nations can object to IWC regulations. However, IWC points out that, while it has its shortcomings, it has nevertheless succeeded in eliminating or sharply reducing the slaughter of the most endangered whale stocks and that certain stocks, such as the bowhead, owe their continued survival to IWC because unregulated commercial whaling had led to the hunting of these stocks to practical extinction.

As a species completely protected from commercial hunting, the bowhead received little attention by the IWC or its Scientific Committee from 1947 to 1972. In 1972, however, the Committee, noting the lack of data on the bowhead whale, asked several countries, including the United States, to obtain information on the aboriginal taking 1/ of bowheads.

1/Taking by indigenous Natives, such as Eskimos and Aleuts.

The Committee also requested that IWC urge the United States to take steps to reduce the waste due to "lost" 1/ whales of all species in its aboriginal fishery. In 1976 IWC's Scientific Committee took a much stronger stand on bowhead conservation, citing reports of increased hunting by the Alaskan Eskimos as the main reason for this concern. The Committee said it strongly recommended that steps be taken to limit expanding the fishery and proposed that specific research studies on the bowhead be performed. IWC adopted a resolution repeating the Scientific Committee's recommendations. However, neither the Interior, as a trustee for the Eskimos, nor NOAA, charged with the responsibilities for bowhead management, provided adequate research funds to comply with the Scientific Committee's request for much needed data and information on the bowhead.

In 1977, after further considering the status of the bowhead, its current population size, the 1976 and 1977 "catch" statistics, and future harvesting risks, the Scientific Committee stated that "on biological grounds, exploitation of this species (bowhead whales) must cease" and it recommended to IWC that the Native take exemption for bowheads be deleted. This meant a ban on subsistence taking of bowhead whales by Alaskan Eskimos. In a December 1977 meeting, the United States proposed to IWC that a quota be established for 1978 to permit subsistence taking. A quota of 14 whales landed or 20 whales struck was finally agreed upon. This amount was less than one-half of 1977's subsistence take by Natives. Since that time, IWC has set quotas for Eskimo subsistence hunting of bowhead whales.

In mid-1979 the Scientific Committee recommended to IWC--for the fourth consecutive time--that from a biological stand point the only safe course was to have a zero kill of bowheads from the Bering Sea. It further recommended that additional efforts be made to help improve the validity of the estimates of the population size and growth potential. In July 1979 IWC called on the United States to determine and document annually to IWC the Eskimo needs for bowhead whales based on such factors as the bowhead's importance in the Eskimos traditional diet and the availability and acceptability of other food sources. The Interior has taken lead responsibility for conducting studies to respond to IWC's request for determining and documenting Eskimo subsistence needs (see p. 36).

1/Whales which have been struck (wounded by harpoon, lance, and/or explosive dart fired from a shoulder gun) but are not retrieved.

Eskimo subsistence whaling

The bowhead whale has been protected from commercial whaling for many years but despite an increasing subsistence harvest by the Eskimos in the mid-1970s the Federal Government did not attempt to regulate subsistence whaling until after IWC temporarily banned aboriginal whaling of the species, some 7 years after the bowhead was listed as endangered. From 1973 through 1977 the Eskimo subsistence harvest of bowheads increased significantly. In the 5 years after MMPA's passage, before there was any regulation of the Eskimo hunt, the Eskimos struck about 350 animals. Since IWC established a quota for Eskimo whaling in 1978, the Federal Government has issued regulations to limit the Eskimo harvest and has expanded research to evaluate the biological effect of the harvest.

The best information available indicates that the number of whales killed and recovered annually by Alaskan Eskimos between 1945 and 1969 varied but did not exceed 23 and averaged 10 whales a year. However, between 1970 and 1976 the annual take averaged 29 whales. Some scientists say that any taking of the bowhead will prevent recovery of the species and that all exploitation must cease.

A number of studies have been made regarding the Eskimo's nutritional and cultural dependence on the bowhead whale. A 1978 NMFS study 1/ concluded that the bowhead was integral to the health and culture of the Eskimos and that an annual take of 24 whales was necessary to meet their nutritional needs. Another 1978 study, performed for the Interior's Bureau of Indian Affairs, 2/ supported the contention of Native village leaders that bowhead whale subsistence hunting was very important to the life of a number of whaling villages of Arctic Alaska. It pointed out that other food sources for several of these communities, such as caribou, was already in short supply and, therefore, could not fill the villages' food needs. Other food sources, such as seals, gray whales,

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1/"A Special Report to the International Whaling Commission; Bowhead Whales," Department of Commerce, NOAA-NMFS, June 1978.

2/"A Study of the Effect of the Limit on Bowhead Whale Take by the Eskimos of Arctic Alaska," W. Jack Peterson, May 1978.

and walruses were discussed as alternatives, but for the villages that depend heavily on the bowhead, these food sources also were not considered adequate or suitable.

In February 1979 a panel of experts was convened in Seattle, Washington, by NOAA to examine the subsistence aboriginal whaling problem. This panel of experts on wildlife science, nutrition, and cultural anthropology concluded that, in strictly biological terms, the only course is to provide complete protection from bowhead whale hunting until the population has made a satisfactory recovery. In nutritional terms, the group reported that the Alaskan Eskimos have no unusual nutritional requirements that could not be satisfied by a well-balanced diet of other food sources and that the risk of the bowhead's survival resulting from continued aboriginal whaling cannot be justified on nutritional grounds. The group added, however, that any quotas or changes relating to the bowhead hunt that are forced upon the Eskimos will have a significant impact upon their cultural well-being.

The Interior established an Interagency Advisory Committee on Bowhead Whaling to assist it in identifying research needs and objectives for determining and documenting Eskimo subsistence needs. The Interior contracted for a study in February 1980 to identify and compile existing data which would help characterize the nature and extent of Eskimo dependence upon the bowhead and establish a basis and recommendations for developing a quota.

Using the results of this study and other data, the Interior prepared an interim report which formed the basis for the U.S. position at the 1980 IWC meeting. This report attempted to address the needs factors identified in the IWC resolution and recommended a quota for the aboriginal/subsistence harvest of bowhead whales based on the needs of the Eskimos. The report suggested that a harvest of 18 to 23 whales annually is needed to maintain the Eskimo culture. It also made other recommendations regarding bowhead whaling activities and the manner of applying the quota.

The Interior recognizes that there are many gaps in the data necessary to adequately document need. It has committed $200,000 for further contracts to help fill some of the gaps. Draft contract proposals relate to improved weaponry (and a reduction in the struck and lost ratio), improved documentation of Eskimo need, and an assessment of substitute sources of subsistence foods. The Interior expects the complete need determination will be a long-term concern requiring substantial study and improved communication with the Eskimo community.

The Alaska Eskimo Whaling Commission

IWC's June 1977 ban on Eskimo subsistence whaling came as a surprise to the Eskimos. This action led to the formation of the Alaska Eskimo Whaling Commission in August 1977 to represent the Eskimo bowhead whalers and provide some local control over the whale harvest.

One of the Alaska Eskimo Whaling Commission's first actions was an unsuccessful attempt to force the United States to object to the IWC ban.

The Eskimo whalers then brought the question of IWC's jurisdiction over their subsistence whaling before the courts. In July 1978 the Eskimo whalers filed suit against the Secretary of Commerce in the U.S. District Court for the District of Alaska, alleging that Commerce regulations implementing the quota were not valid because (1) IWC had no jurisdiction over Native subsistence whaling, (2) the United States had violated its trust responsibility to the Alaskan Natives by issuing the regulations, and (3) the regulations violated the provisions of both MMPA and ESA. 1/

The Government conceded the importance of subsistence hunting to the Eskimos but contended that because of foreign policy considerations, the court had no jurisdiction to consider the validity of the regulations. The court agreed that the issue was so directly linked to the conduct of U.S. foreign relations that it lacked jurisdiction. Accordingly, in January 1979 the court dismissed the Eskimos' action without determining its merits. In February 1979 the Eskimos appealed this decision to the U.S. Court of Appeals for the Ninth Circuit. In August 1980 the appeals court returned the case to the district court stating that the district court did have jurisdiction over this matter. No decision on the merits of the case had been made as of March 1981.

Although the Eskimos do not agree that IWC has jurisdiction over their subsistence whaling and the question has not yet been settled by the court, the Alaska Eskimo Whaling Commission cooperated with and assisted the Federal Government through 1979 in regulating whaling activities and in bowhead research. In 1980, however, it did not cooperate with NMFS in regulating whaling, nor did the Eskimos

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1/Hopson v. Krepps, 462 F. Supp. 1374 (D. Alas. 1979).

limit their take to IWC's quota. The Department of Justice decided to investigate and, as of February 1981, Federal grand jury hearings were being held in Alaska.

The role of the Marine Mammal Commission and Federal research coordination

Although the bowhead whale was designated as an endangered species under the Endangered Species Conservation Act in 1970, it was not designated as depleted under MMPA until November 1977. Both acts provide for the regulation of subsistence harvest by Alaskan Natives when a species is classified as endangered or depleted. The Federal Government did not regulate Eskimo subsistence whaling for the bowhead under either ESA or MMPA, but rather elected to regulate it under the provisions of the Whaling Convention Act of 1949. Thus far, such regulation has been confined essentially to allocating IWC quotas for aboriginal whaling among the Eskimo villages.

MMC recommended in February 1977 that NMFS designate the bowhead as a depleted species. In November 1977 this designation became final and NMFS, under MMPA's authority, issued proposed regulations for Eskimo subsistence whaling. On January 30, 1978, these proposed regulations were withdrawn and, on March 6, 1978, NMFS proposed regulations under the authority of the Whaling Convention Act.

Under MMPA and ESA, NMFS conducts biological research relating to the status and trends of the bowhead whale population. Some recent NMFS population studies and projections indicate that the bowhead population is decreasing and will continue to do so even if the currently allowed low level of Eskimo whaling is discontinued. Under quotas set by IWC for 1981 through 1983, a total of 45 whales can be landed with 65 struck. Any 1-year limit, however, has been set by IWC at 17 animals landed. Concerning the potential adverse impacts of oil and gas development, BLM has prime responsibility under the Outer Continental Shelf Lands Act.

Intensive coordinated Federal efforts and study of the bowhead did not begin until after enactment of the 1972 MMPA and 1973 ESA. NMFS began research in 1973 to obtain population and biological data on the bowhead whale to evaluate the effect of the Eskimo subsistence harvest and the potential effect of offshore oil exploration and development on the species. NMFS expanded its research in 1976 with funds from BLM's Outer Continental Shelf Environmental Assessment Program to obtain data on the bowhead whale's abundance, movement, and distribution.

In 1977 and 1978 MMC provided NMFS with recommendations on its research plans. NMFS further expanded its research in 1978 in response to IWC lifting its ban on Eskimo subsistence hunting. BLM also began bowhead research in 1978 as a part of its environmental assessment of nearshore oil and gas development in the Beaufort Sea. MMC evaluated BLM's research plans and helped coordinate the research of the two agencies. Both NMFS and BLM research officials said MMC had been helpful in improving their research programs.

In March 1979 MMC was concerned that BLM may have invested funds in bowhead whale research that was not well-conceived, planned, or justified. In a March 22, 1979, letter, MMC recommended to BLM that it postpone the Beaufort Sea oil and gas lease sale until there was sufficient information to be sure that the proposed sale would not have an adverse impact on the bowhead whale. MMC also advised BLM to have additional consultations with NMFS to determine research needs more precisely. MMC wrote to BLM about 2-1/2 months later and said that a minimum of 3 years would be needed to obtain reliable information on bowhead numbers, distribution, movements, and habitat requirements.

Representatives of NMFS and BLM met in April 1979 to review the agencies' research plans and to discuss ways to improve coordination. To facilitate research coordination, a written interagency agreement was developed and signed by BLM and NMFS on June 26, 1979.

MMC provided comments to BLM in June 1979 on BLM's draft environmental impact statement and related research proposal for the proposed lease sale in the Beaufort Sea. MMC stated, among other things, that much of the proposed work was "basic" biological research and was not designed to provide the information needed to predict how offshore oil and gas development might affect bowhead whales. MMC added that some of the proposed work was duplicative of that being conducted and planned by NMFS.

Although NMFS and BLM both agreed that further consultations were needed, neither agency, according to MMC, was able to effectively and properly followup on MMC's recommendations. Therefore, in August 1979, MMC, in consultation with NMFS and BLM, convened a meeting to review and develop

plans for cetacean 1/ research in the Beaufort Sea and other offshore Alaska areas. During this meeting, it was agreed that both NMFS and BLM would draft and circulate multi-year research plans for review and comment. 2/

In October 1979 BLM transmitted its multi-year bowhead research plan to NMFS with a request that NMFS consider formally endorsing the plan. MMC also received a copy of the plan and subsequently advised BLM that, while the plan was basically sound, the program outlined in the plan would not provide all of the information needed to predict, mitigate, and/or monitor the possible effects of offshore oil and gas development activities on bowhead whales. NMFS responded to BLM's request in November 1979, noting that it endorsed the major objectives of BLM's plan but that it was unable to comment on specific elements of the plan because it did not include budget information or descriptions of the methods that would be used to collect and analyze data. An attachment to the NMFS response also noted that several of the studies being planned by BLM were similar to studies being planned by NMFS, and urged that NMFS and BLM formalize a new letter of agreement with regard to certain studies to be conducted by each agency.

On November 20, 1979, MMC wrote both agencies and requested that it be advised as to what steps were being taken to complete a new letter of agreement and to coordinate their research programs. By letter dated November 30, 1979, BLM advised MMC that it and NMFS had agreed to modify the existing letter of agreement, rather than develop a new one, and that representatives of the two agencies planned to meet in February 1980 to coordinate their research programs. In December 1979 MMC advised BLM that it appeared that everything necessary was being done to coordinate BLM's and NMFS' bowhead research programs. In February 1980 MMC also advised BLM that, judging from information provided during a meeting with one of BLM's contract investigators, it appeared that problems concerning duplication and cost-effectiveness of certain ongoing studies had been resolved.

1/Any of an order (cetacea) of aquatic, mostly marine (sea) mammals, including whales, dolphins, porpoises, and related forms with large heads, fishlike, nearly hairless bodies, and paddle-shaped forelimbs.

2/For fiscal years 1979, 1980, and 1981, NMFS budgeted $871,000, $743,000, and $765,000, respectively, for bowhead research. For the same fiscal years, BLM budgeted $650,000, $1.2 million, and $1.56 million, respectively, for bowhead research.

In May 1980 MMC completed a general assessment of BLM's environmental studies program as it relates to marine mammals and transmitted its comments and recommendations for improving the program to BLM. MMC indicated the types of determinations that should be made by BLM in carrying out the program so as to meet MMPA intents, identified information needed to make those determinations, and noted the need to strengthen certain aspects of BLM's environmental studies and assessment programs.

The Chairman of MMC told us that when BLM first began its Outer Continental Shelf research on the bowhead whale, it appeared there might be duplication of effort between BLM and NMFS. However, the two agencies had coordinated their research so that duplication and conflicts between them have been avoided. He said he "believes" MMC's efforts have helped to resolve the potential conflict.

NMFS marine mammals laboratory research officials stated that MMC had "pushed" NMFS into emphasizing marine mammal research and had provided assistance in developing research plans. BLM research officials said that MMC had helped to improve BLM's bowhead research programs and to coordinate BLM and NMFS research efforts. The BLM officials said they did not believe there was any duplication between the two agencies' research because NMFS research is directed at determining the effects of Eskimo subsistence whaling while BLM research is directed at determining the potential effects of Outer Continental Shelf oil and gas development.

A State of Alaska Fish and Game research official also said there had not been duplication in marine mammal research by the different agencies and organizations involved. He said marine mammal researchers were a small and close-knit "family" who knew what each other was working on and what work had already been done. Even though marine mammal research is being done by the State, NMFS, FWS, and BLM, he did not believe it would have been done much differently if it were all done by one agency.

In November 1980, MMC, NMFS, and BLM held another meeting (which we attended) to coordinate bowhead whale and other endangered marine species research. The purpose of this meeting was to identify critical data gaps in the information needed to predict and mitigate the possible effects of offshore oil and gas development and to develop an interagency plan for bowhead and related research for fiscal year 1981 and beyond. After this meeting, a MMC participant told us that substantial progress had been made in coordinating NMFS and BLM research efforts.

Conclusions

The underlying problems in managing and preserving the endangered bowhead whale centers around the conflict of protecting the species while, at the same time, attempting to satisfy the Alaskan Eskimos' need for subsistence and preserving their culture.

There are divergent views as to whether a suitable substitute exists for the bowhead whale as a food source for the Eskimos.

Concerning the current population levels of the bowhead whale, there is, as in the case of other marine mammals, differences of opinion. Some recent NMFS population studies and projections indicate that the bowhead population is decreasing and will continue to do so even if the currently allowed low level of Eskimo whaling is discontinued.

Because there are differences of opinion as to the status of the whale population as well as concern over the validity of recent estimates of population growth, IWC's Scientific Committee has called for additional studies and more research. The need for this information is also dictated by the potential threat to the bowhead whale population from planned oil and gas exploration and development in the Beaufort Sea, north of Alaska.

Although MMC and others have raised questions concerning possible duplication of research between NMFS and BLM, the questions were addressed and the level of cooperation and coordination between the two agencies, with the help of MMC, was satisfactory. To insure that the high level of research between the two agencies is well coordinated, the agencies, at the suggestion of MMC, developed and entered into a formal interagency agreement in June 1979. Concentrated research on the bowhead whale began after MMPA and ESA were passed, with research efforts being expanded in the late 1970s. MMC has continually assisted the agencies in planning and coordinating research. After a meeting, convened by MMC in 1979, NMFS and BLM agreed to draft multi-year research plans for bowhead whales.

It appears that until such time that (1) the necessary research and related studies are completed, (2) the pertinent facts on the status and trends of the bowhead population are obtained, (3) the potential adverse affects of human activities (oil and gas exploration) are evaluated, and (4) the subsistence needs of the Alaskan Eskimos are fully understood, the future of an endangered species--the bowhead whale--and an endangered culture--the Alaskan Eskimos--is, at best, uncertain.

THE WEST INDIAN MANATEE--AN ENDANGERED SPECIES

Most of the problems such as high mortality rates threatening manatees in Florida were known before MMPA or ESA were passed. However, FWS did not take actions to resolve the problems. The absence of an adequate FWS manatee management program and MMC's concern over possible depletion of the species in the United States, if annual losses were not substantially reduced, led to MMC's concerted efforts to stimulate research and initiate protection measures and to actively work with the State of Florida in addition to the Federal agencies.

The West Indian manatee (see p. 44) is an endangered marine mammal that inhabits rivers, estuaries, and coastal waterways in Florida and elsewhere. Manatees are rare in many parts of their former range and have been listed as an endangered species in the United States since March 11, 1967.

The population of manatees has been severely reduced by over-exploitation for meat, oil, and other products. The manatee in the United States is protected by MMPA, ESA, and State laws. The largest existing population of West Indian manatees is in Florida and numbers about 1,000 (see map on p. 55). Although data is insufficient to determine whether the Florida population is stable, increasing, or decreasing, manatee mortalities from human-related activities are high and this is the basis for concern that the population may be declining.

Specifically, manatee mortalities associated with human-related activities result from collisions with boats and barges, entrapment in flood control structures, entanglement in fishing gear, poaching, 1/ and vandalism. Of the 263 carcasses FWS and the University of Miami recovered between 1974 and the end of 1978, salvage teams determined the cause of death for 133 animals. Of these, 88, or 67 percent, were killed directly or indirectly by human activities; 51 by collision with motorboats or barges; 20 by human structures such as automatic floodgates and canal lock gates; 6 by undetermined trauma; and 11 by other human causes, such as ropes and fishing nets, lines, and hooks.

The manatee is also threatened by disturbances to its habitat created by boat waves and associated turbidity and siltation and by shoreline development activities. Harassment by boats and swimmers cause manatees to leave resting and feeding areas and move to cooler waters. Because

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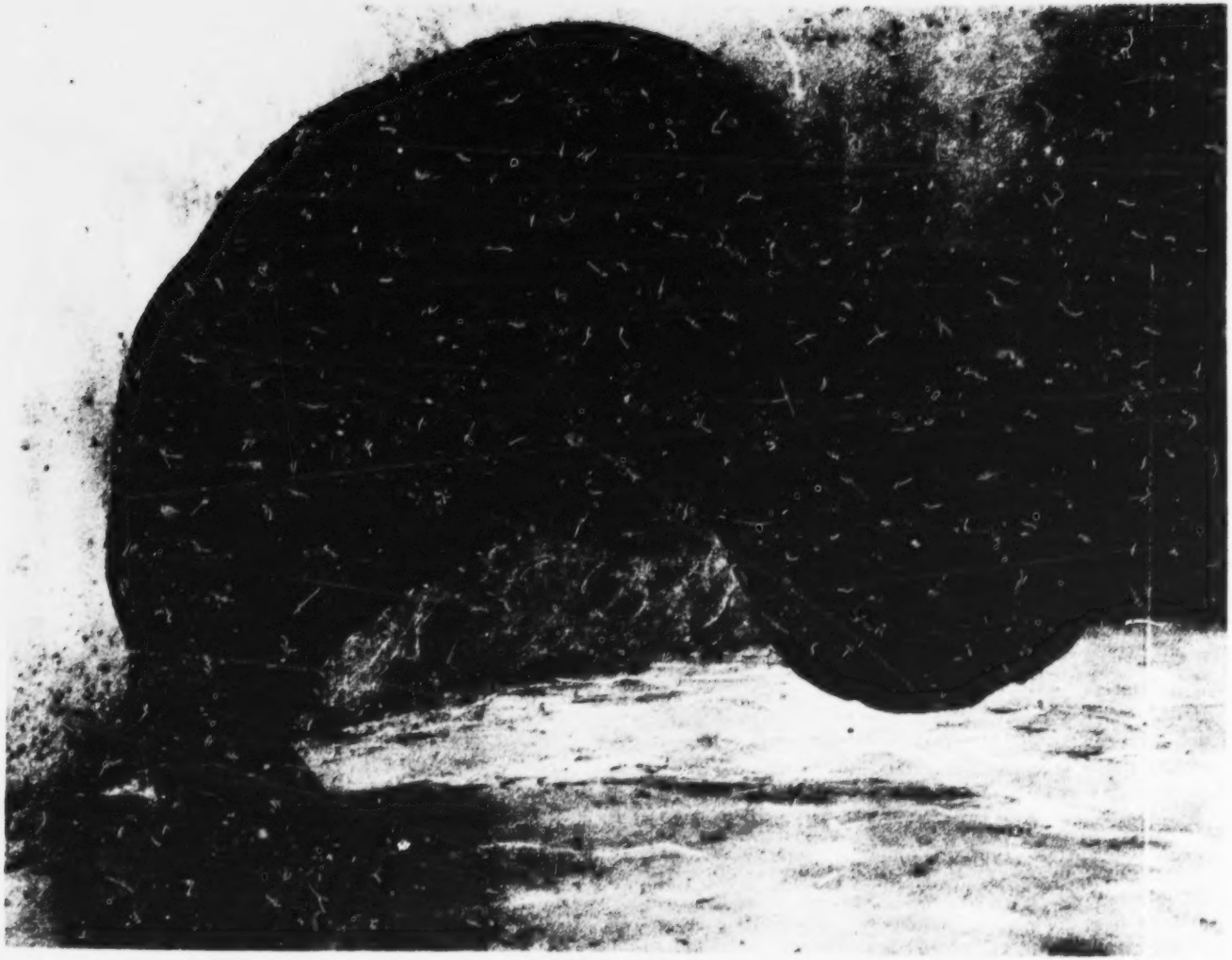
1/The illegal taking of manatees.



MANATEE

Source: U. S. Fish and Wildlife Service

manatees are sensitive to cold temperatures, movement to cooler waters may result in deaths. Furthermore, when warm water effluents from powerplants which attract concentrations of manatees are interrupted, manatees may die.

FWS, State of Florida, and MMC roles in protecting the manatee

Although FWS sponsored some research and protection activities related to the manatee--between the passage of MMPA in 1972 and 1976--the level and scope of these actions were not adequate to fully protect and encourage recovery of the manatee. FWS told us that in 1972 it identified certain actions it believed were needed to enhance survival of manatees in unique areas in Florida. It suggested establishing sanctuaries, public use restrictions, and power boat speed limits; restricting detrimental development; eliminating pollution of manatee food sources; and promoting public education. It also said that in 1974 it recommended the use of mechanical weed control measures, where feasible, and discouraged the use of certain chemicals in weed control to protect the manatee and its habitat.

FWS spent about $350,000 during fiscal years 1974 to 1976 on manatee-related studies, including studies on the ecology, behavior, and physiology of the manatee. However, in November 1976, after reviewing the marine mammal research projects of FWS's National Fish and Wildlife Laboratory, MMC recommended that FWS request additional funds to expand the domestic and international manatee and dugong program. MMC also recommended that a workshop be held on manatee issues and recovery efforts.

FWS designated critical habitat for the manatee in 1976 and established a recovery team in July 1976 to prepare a recovery plan for the manatee--this was about 3 years after ESA was passed. The recovery team, however, was not very active and did not start a recovery plan until sometime in 1978.

Under ESA, recovery plans are required to be developed for conservation and survival of threatened or endangered species. A recovery plan is a document that identifies when, why, and what action should be taken and by whom to protect and facilitate recovery of such species.

MMC met with FWS officials in January 1977 to discuss the management plans for the manatee. According to MMC, the meeting highlighted the need for prompt research and responsive conservation efforts. FWS told us that it began an increased manatee research effort in 1977 which included,

among other things, studies of the effects of vegetation control programs on manatees and manatee habitat requirements.

Following a similar meeting in February 1978--more than a year later--MMC wrote to the FWS Director in March 1978 and said that within Interior there appeared to be no centralized authority directing efforts to ensure the protection or recovery of the manatee, and that the recovery team, first established in July 1976, appeared to have been inactive. MMC also said that manatee mortality rates were high and that FWS appeared to have initiated little or no affirmative action under either MMPA or ESA to resolve problems threatening manatees.

MMC's Executive Director noted that concerns focused on the lack of any central authority with responsibility for integrating available information on the manatee, directing a coordinated research and management effort to resolve problems, and assigning priority attention to them. MMC also asked FWS' Director to provide information on the status of the manatee recovery team.

FWS' Director responded to MMC's letter in May 1978 and stated that:

--He is the centralized authority responsible for protecting the manatee.

--FWS has clear cut authority under MMPA and ESA and was working with the State of Florida to protect the species.

--The recovery team was reactivated in January 1978 and had been reorganized.

The Director also stated that meetings had been held with the State and other Federal agencies to develop specific plans and strategies for the manatee and that, in October 1977, FWS and State representatives had talked about Federal/State jurisdiction problems and regulations to restrict boat speeds. He pointed out that the report on the manatee workshop held in March 1978 included some general management regulations. Other FWS protection efforts included

--coordinating with the Corps of Engineers to reduce manatee mortality and injury from dredging activities,

--preparing proposed manatee regulations for a refuge,

--working with the State to prepare regulations to limit boat speeds, and

--public information and awareness efforts such as posting warning signs urging boat operators to use caution in manatee inhabited areas.

Following the Director's May 1978 reply, MMC began an intensive review of Federal/State activities relating to manatee protection and conservation. MMC also sponsored a study 1/ to summarize and analyze the problems of manatee protection in Florida. The study stated that,

> "The adverse affects of human activities on manatees and manatee habitats in Florida could be minimized or eliminated. However, neither the federal government nor the state government have made a firm commitment to implement and enforce relevant provisions of the Marine Mammal Protection Act of 1972 (MMPA) or the ESA, both of which contain clear directives for protection of endangered species."

Reporting on the review to FWS' Director in August 1978, MMC concluded that FWS was not acting with the urgency required to protect the manatee in view of the substantial increase in mortality rates during the early part of 1978. MMC raised issues regarding the need for

--expanded boat speed regulations to cover more manatee refuges,

--"more sharply" defined objectives of the manatee recovery team,

--a "high-level group of State and Federal officials" to review the recommendations of the manatee workshop, and

--a coordinated statewide program to be implemented to protect the manatee.

1/"The West Indian Manatee (Trichechus manatus) in Florida--A Summary and Analysis of Biological, Ecological, and Administrative Problems Affecting Preservation and Restoration of the Population," by the Center for Action on Endangered Species, Sept. 1978.

MMC recommended that the manatee recovery team:

> "1. define the most serious problems affecting manatees; 2. review alternative methods of resolving those problems; 3. recommend immediate solutions in cases where available information is adequate; and 4. determine research priorities * * *."

MMC requested that representatives of FWS meet with MMC to discuss the manatee protection program.

As MMC had suggested, FWS and MMC officials met in September 1978 to discuss the manatee program and the matters MMC raised. However, according to MMC, the information FWS provided at the meeting was not adequate to assure that effective actions were being taken to protect and encourage recovery of the manatee. For example, FWS officials were unable to tell MMC how long it would be before the recovery plan, once submitted, would be approved and implemented.

In November 1978 MMC recommended to Interior's Assistant Secretary for Fish, Wildlife, and Parks that he initiate "an intensive review and evaluation of the Department's program to solve the manatee problem." MMC also recommended that the Interior's overall marine mammal program be reviewed and evaluated to resolve, among other things, issues in

> "* * * the following aspects of the program: enforcement policies and practices; the permit process; the relationship between the Marine Mammal Protection Act and other relevant statutes such as the Endangered Species Act; the application by the State of Alaska for a waiver of the moratorium and return of management; policies and practices with respect to funding state research and management programs; and the California sea otter program."

In January 1979, 2-1/2 years after the first recovery team was established, FWS provided MMC with a draft manatee recovery plan for review and comment. MMC's staff found that the plan appeared to be research oriented and did not respond to management concerns. Specifically, the research proposed in the plan did not respond to management requirements for data on such things as habitats. MMC suggested that FWS rewrite the plan. FWS gave MMC a revised draft recovery plan in April 1979. MMC found that the plan was a good beginning but in need of additional work. In particular, MMC recommended that specific task implementation

plans detailing commitments for each recovery plan objective and task be added to the plan. In May 1979 MMC and FWS staff met again to discuss manatee recovery plans and actions. However, MMC again found FWS' response to questions on the manatee recovery program inadequate. MMC said questions raised during the preceding August meeting remained unanswered.

In March 1979 MMC appeared before the Senate Committee on Appropriations and was asked how additional funds might be used in helping to resolve specific marine mammal problems. Responding to the questions raised during and after the Senate hearings on how it might influence the manatee situation if additional funds were available, MMC described to both the House and Senate Committees on Appropriations its views on priority requirements. The Congress then increased MMC's fiscal year 1980 appropriation by $300,000, of which $100,000 was for work on the manatee.

In November 1979 FWS gave MMC the revised recovery plan. While MMC found the plan improved, it objected to the absence of the previously recommended "implementation plans."

State and Federal program improvements

MMC's Executive Director visited Florida in December 1979 to reevaluate the manatee situation with Federal and State research and management officials and other interested parties. He concluded that (1) management-related actions such as the designation of an FWS official responsible for the manatee were needed more than additional research if good use was to be made of research already done, (2) FWS needs a full-time manatee program coordinator to maintain an overview of manatee-related activities and to facilitate the development and implementation of FWS manatee recovery activities, and (3) the Florida Department of Natural Resources had the ability and enthusiasm to undertake increased regulatory, enforcement, and educational activities.

The State had displayed an interest in protecting the manatee and had enacted the Florida Manatee Sanctuary Act in July 1978 which declared specific areas of Florida as manatee sanctuaries. Provisions were made by the State for regulating boat speeds and prohibiting molestation, harassment, and disturbance of manatees. Permits are required to "possess" manatees. The law is enforced by the Florida Game and Freshwater Fish Commission and the Florida Department of Natural Resources. The Department of Natural Resources had also posted manatee protection signs (see pp. 56 and 57) and promulgated regulations governing boat speeds in designated protection areas which have been enforced through the Florida Marine Patrol with financial

assistance from Interior. Regulations, however, are in effect only from November to March when manatees seek warm waters. According to information provided by the Department of Natural Resources, there were 31 arrests made and 190 warnings issued in 1979 and 72 arrests made and 850 warnings issued in 1980 in conjunction with manatee regulations in designated protection areas.

The State, assisted by FWS and other interested parties and individuals, also strengthened the educational program. The Florida Power and Light Company has sponsored research regarding manatees being attracted to the warm water effluents of powerplants.

MMC, based on the information from earlier reviews, the research planning meeting, and the Executive Director's visit to Florida, tentatively decided in December 1979 that consideration should be given to using the $100,000 supplemental appropriation for (1) establishing a full-time manatee program coordinator in FWS, (2) first-year support of a Florida manatee advisory committee, (3) support seminars for State enforcement personnel, (4) supplemental support of the Florida Department of Natural Resources' manatee information and education program, and (5) specific research proposals.

At a meeting in February 1980 with Federal and State officials, MMC and FWS staff negotiated the terms for an interagency transfer of the funds by MMC to FWS to be used to hire a manatee recovery coordinator. FWS and the Florida Audubon Society signed a cooperative agreement through which FWS would support the Society's efforts "to facilitate and intensify efforts to protect and encourage the recovery * * *" of the manatee through a manatee activities coordinator. In March 1980 MMC agreed to transfer funds to FWS for the first-year support of the coordinator, and FWS agreed to continue support during the succeeding 2 years. In April 1980 FWS approved the manatee recovery plan--about 4 years after the recovery team was first established.

In June 1980 MMC also agreed to transfer $43,000 to FWS to

--develop standard methods and procedures for mapping, characterizing, and monitoring areas that are determined to be of special biological significance to manatees and

--develop a research management plan for the Crystal River area which is to serve as a model for developing area-specific research management plans for other populations.

MMC has also contracted with the Florida Department of Natural Resources to hold law-enforcement workshops, disseminate information brochures to educate the public on manatee biology, conservation, and protection, and rewrite portions of the field officers enforcement manual.

MMC, FWS, and the manatee recovery activities coordinator met in June 1980 to discuss the coordinator's role and plans concerning the manatee. At the meeting it was decided that the coordinator should devote his time to long-range planning by completing a comprehensive work plan tied to FWS' recovery plan.

FWS agreed to assign a full-time person to help with the day-to-day management activities, and FWS did appoint such a person to the Jacksonville staff. In October 1980 the manatee recovery activities coordinator provided FWS a draft of a task implementation plan which will outline the specific things that need to be done to meet the objectives of the approved recovery plan. The comprehensive work plan is expected to be completed by June 1981.

The Florida Department of Natural Resources informed us that the manatee coordinator has significantly improved its ability to coordinate State and Federal programs.

In late 1980 MMC's Executive Director expressed the belief that the recent improvements that have been made can encourage recovery of the manatee. However, he believes the management problems associated with the manatee and other marine mammals will continue unless FWS designates one high-level office the responsibility for marine mammal activities.

FWS' Associate Director, Federal Assistance, informed us that a reorganization is being studied which would provide a single, high-level office for marine mammal activities. FWS officials agreed that the manatee recovery effort had not been as aggressive as was needed. They said this was due, in part, because the manatee is one of many species for which FWS is responsible. They stated that the manatee is now being given higher priority as demonstrated by the following program improvements:

--A manatee recovery plan has been prepared and approved.

--A manatee recovery activities coordinator has been hired.

--A manatee management focal point has been designated in Florida.

FWS also told us that it had implemented its first annual manatee law enforcement strategy plan in September 1978 to maximize cooperative Federal/State enforcement activities and had finalized regulations in October 1978 to control boat speeds in certain areas. FWS said that it had also provided funds to the State of Florida in 1979, 1980, and 1981 for increased law enforcement activities and conducted workshops with the State providing biological and law enforcement information.

Proposed FWS marine mammal management reorganization

In December 1980 FWS indicated that its planned marine mammal management reorganization is intended to give marine mammal management a more prominent position in FWS through the creation of a separate organization entity--an Office of Marine Mammals. This office would have direct management responsibility--maintenance, protection, enhancement and conservation of current population--for all marine mammals assigned to FWS, including those listed as endangered and threatened, and would be under the Associate Director, Wildlife Resources. The proposed plan also calls for the responsibility for marine mammal endangered species regulatory activities (i.e., listing/delisting as endangered species and consultation and recovery plan development) to be accomplished by the Office of Endangered Species under the Associate Director, Federal Assistance.

We believe that elevating marine mammal management to a position of greater emphasis in FWS is important. Regarding manatee management, little was accomplished from 1972 through 1978 because, according to FWS officials, manatee management was not regarded as a high priority matter nor was there a centralized authority to direct and integrate management and research activities. FWS plans to create a separate entity for certain marine mammal management activities, and having an Office of Marine Mammals, reporting directly to the Associate Director, Wildlife Resources, should help provide some of the centralized direction that was previously missing. The need to divide marine mammal management responsibility between two separate Associate Directors--Federal Assistance and Wildlife Resources--is, however, questionable.

In the past MMC identified several problems associated with the divided responsibility that exists within Interior, relative to promoting and accomplishing MMPA and ESA objectives. Continuing with a division of management responsibility as is planned in the proposed reorganization may call for

a greater degree of coordination and communication than would be necessary if the marine mammal management functions were placed under one Associate Director. This could be accomplished by placing the newly proposed Office of Marine Mammals under the Associate Director, Federal Assistance, since endangered and threatened species fall under this Associate Director's Office of Endangered Species already and have the Office report directly to the Associate Director. This would place FWS' marine mammal management program under a single, central authority.

We recognize that the proposed reorganization plan is still in the planning and formulation stages and may be substantially modified before it is finally approved.

Conclusions

Manatees were first listed as an endangered species in the United States in 1967. While data is insufficient to determine whether the Florida manatee population is stable, increasing, or decreasing, manatee mortalities from human-related activities are high.

FWS established a recovery team for the manatee in 1976. However, no work was done on a recovery plan until 1978 when the recovery team was reactivated--this was about 5 years after ESA was enacted.

Because FWS did not emphasize developing a management plan for the manatee, MMC led the Federal efforts to stimulate action and coordinate State and Federal programs.

FWS officials responsible for the manatee program agreed that the manatee recovery effort was not as aggressive as was needed. We believe that FWS, working with MMC and, in some cases, with funds provided by MMC, has made improvements in its manatee recovery program efforts. Specifically, there is an approved manatee recovery plan, a work plan is being completed, a manatee recovery activities coordinator has been hired, and FWS has designated a specific person in its organization as a manatee management focal point in the State of Florida.

We believe that while some action has been taken on the manatee recovery and protection program, additional work needs to be accomplished. Specifically, the previously mentioned comprehensive work plan that is to cover certain actions to protect the manatee, such as methods of reducing vessel collisions with manatees, must be completed. Also, management problems that affect the manatee as well as other marine mammals under FWS's jurisdiction have not been

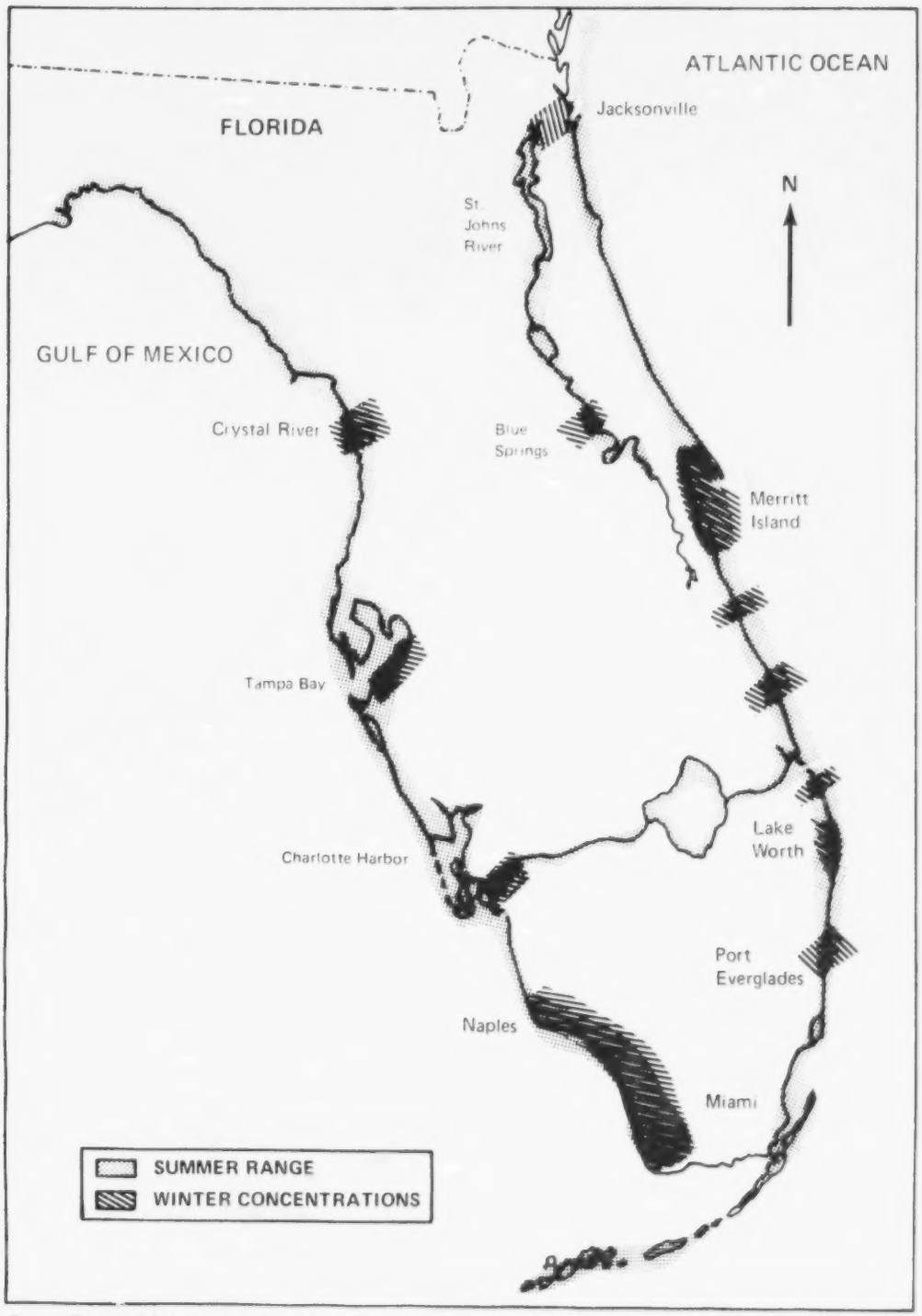
resolved. We believe that, to improve coordination and planning and communication among the many current FWS offices dealing with marine mammals, the Interior should designate a single, high-level office that is responsible for all of its marine mammal management activities.

FWS said it is planning a reorganization to give marine mammal management a more prominent position in the Department by establishing a separate office. The preliminary reorganization plan, however, leads us to believe that responsibility for marine mammal management will still need high-level attention and will still be divided between two Associate Directors and, consequently, require coordination and consolidation of certain efforts within Interior to attain more effective, responsive Federal management.

Recommendation

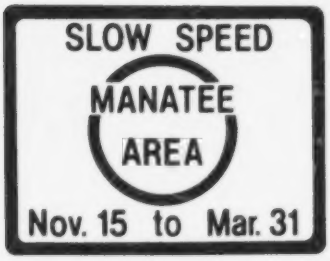
We recommend that the Secretary of the Interior insure that the proposed reorganization for marine mammal management provide a sufficiently high level of specific management emphasis to marine mammals and, to the extent possible, eliminate divided responsibilities between the various FWS offices.

Seasonal Distribution of the West Indian Manatee in Florida



Source: Report - Administration of the Marine Mammal Protection Act of 1972 (April 1, 1979 to March 31, 1980) p.53, U.S. Fish and Wildlife Service, DOI

WATCH FOR THESE SIGNS.



This sign appears on the **fringe of protected areas** from November 15 to March 31 each year.

This sign appears in the **center of protected areas.**

This sign appears on the **fringe of protected areas** also; you will see it as you leave the area.

This sign appears from the St. Lucie Inlet to Jupiter Inlet.

This sign appears in the Crystal River Sanctuary.

Source: State of Florida, Department of Natural Resources.

MANATEE CAUTION SIGN

SOURCE: STATE OF FLORIDA, DEPARTMENT OF NATURAL RESOURCES

THE HAWAIIAN MONK SEAL--
A DEPLETED AND ENDANGERED SPECIES

The Hawaiian monk seal (see p. 59) inhabits a limited area on and around the coral atolls of the northwest Hawaiian Islands. Periodic population surveys by research groups since the late 1950s indicate that there has been a decrease in population size. In 1958, 1,200 animals were reported, while in 1977 fewer than 700 were counted.

There are, however, as in the case of other marine mammals, differences of opinion on the actual status of the population. For example, in April 1978 the Marine Affairs Coordinator for the State of Hawaii said local biologists involved with the monk seal were reluctant to place much faith in earlier population estimates and recent short-term population surveys. He concluded that it is not known if the population decreased or increased in the last 20 years. The State's Department of Land and Natural Resources told us that determining the magnitude and significance of the apparent seal population decline through sporatic field counts may be misleading because as much as two-thirds of the seals may be away at sea at any given time.

NMFS has responsibility for protecting the monk seal. Part of the monk seal habitat lies within a national wildlife refuge and, since FWS manages the U.S. National Wildlife Refuge Program, it also has certain responsibilities to protect the monk seal. NMFS declared the monk seal depleted under MMPA on July 22, 1976, and classified it as endangered under ESA on November 23, 1976.

Although some progress concerning the management and hopefully the recovery of the monk seal has been made, MMC, as late as December 1979, said that neither NMFS nor FWS had developed an effective program for protecting and encouraging the recovery of the monk seal. This was some 3 years after the species was designated as depleted and endangered.

State and Federal officials and various interest groups associated with management of the monk seal have different views on what actions are needed to protect and encourage recovery of the monk seal. The main management issues concern

MONK SEALS Source: Tom Loughlin, National Marine Fisheries Service

--a proposed Federal designation of critical habitat 1/ (this involves disputes over restrictions on State territorial waters and conflicts with the fishing industry),

--the need to implement a long-range comprehensive research plan, and

--the need to develop a suitable recovery plan.

The Marine Mammal Commission's role

After reviewing the status of the monk seal population, MMC recommended in a December 1975 letter to NMFS that the monk seal be designated as depleted under MMPA and endangered under the provisions of ESA. MMC stated that protecting the monk seal from all forms of human intrusion may represent the single most important action that could prevent its extinction. It also said that just designating the monk seal as depleted and endangered would not be sufficient to secure its protection and conservation. MMC therefore recommended that NMFS undertake cooperative action as may be necessary to designate monk seal breeding areas as critical habitat under section 7 of ESA. MMC also sent copies of this letter to the Interior, U.S. Coast Guard, and Department of the Navy asking their cooperation in protecting and conserving the monk seal.

In a December 1976 letter to NMFS, MMC again recommended that portions of the monk seal's habitat be designated as "critical" pursuant to ESA and that all activities which affect the critical habitat of the monk seal so as to threaten its survival or recovery be restricted or discontinued. In addition to requesting that certain geographical areas be placed off limits to all persons, including commercial and sport fishing, and prohibiting access to certain islands and adjacent waters out to a distance of 3 miles, MMC recommended certain census-taking techniques for NMFS and FWS to use in developing information on the status and the growth trends of the monk seal population.

1/Specific areas within the geographical area occupied by a species at the time it is listed as endangered or threatened which have the physical or biological features essential for the conservation of the species and which may require special management considerations or protection. It can also include areas not occupied by the species at the time of listing if it is determined that these areas are necessary to conserve the species.

To further its understanding of the monk seal and to identify actions which may lead to its recovery, MMC supported a major field study 1/ in 1977 to assess the size, movements, and productivity of the monk seal population at Laysan Island--the largest of the northwest Hawaiian Islands. This study has been expanded into a 5-year project and is currently funded by MMC and NMFS.

Of the issues surrounding the development and implementation of management action to protect the monk seal, the recommendation to designate critical habitat and develop a suitable recovery plan (with appropriate research) were and continue to be the most important matters that warrant attention and resolution by the Federal managers pursuant to fulfilling the objectives of MMPA and ESA.

Designating critical habitat and developing a recovery plan

As noted earlier, designating the monk seal as depleted and classifying it as endangered is not enough, according to MMC, to insure appropriate protection to prevent its extinction. According to MMC, the monk seal is in danger of extinction and designation of critical habitat is important to save it. MMC first advised NMFS of this in December 1975.

A critical habitat for an endangered or threatened species is established under section 7(a) of ESA. Once established, Federal agencies are prohibited from authorizing, funding, or carrying out any activities that would result in the destruction or adverse modification of such habitat. NMFS and FWS guidelines provide that the entire habitat or a portion of the habitat of an endangered or threatened species may be determined to be critical if any constituent elements necessary to the normal needs or survival of that species is adversely affected. Such needs include space for growth, movement, or territorial behavior; nutritional requirements; and sites for breeding, cover, and shelter.

MMC pointed out to NMFS that, in its view, all available scientific information indicates that whenever man has "invaded" the habitat of the monk seal, its numbers decline and it eventually disappears. Thus, MMC concluded that all areas used as breeding grounds--islands and adjacent waters up to a distance of 3 miles--constitute critical habitat for

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1/"The Hawaiian Monk Seal on Laysan Island: 1977," a study prepared under contract with MMC by Brian W. and Patti A. Johnson, Sept. 1978.

the monk seal and must be protected from human intrusion if the monk seal is to survive.

In February 1977, NMFS, in its evaluation of MMC's recommendations on restricting Federal actions which may affect critical habitat of the monk seal, said that while it recognizes that some interim regulations may be necessary to protect the monk seal habitat until better regulations can be developed on the basis of future research, a critical habitat incorporating a 3-mile zone was purely arbitrary and not based on biological data. NMFS also said that MMC's recommendation to regulate commercial and recreational fishing would be discriminatory because other boating would be permitted at certain locations in the habitat area. NMFS also pointed out that no overwhelming evidence exists to show that human habitation has been the basic cause of population decline because declines have occurred in areas uninhabited by man.

MMC agreed that the 3-mile zone designation was arbitrary, but said that because of the uncertainties associated with information on the species such protection was considered to be both logical and appropriate. MMC also pointed out that designating an area as a critical habitat does not preclude all activities in the area but helps to ensure that Federal activities are undertaken only when there is reasonable assurance that the activities will not adversely affect the population. MMC concluded that a recovery plan was necessary to protect the monk seal.

In an August 22, 1977, letter to MMC regarding designation of critical habitat for the monk seal, NMFS said it supported strict limitations on human activities in the Hawaiian Island National Wildlife Refuge, including commercial and sport fishing operations. NMFS stated, however, that it did not feel that commercial fisheries should be excluded entirely from the area because it had no indications that developing fisheries outside the refuge will compromise the protection and/or recovery of the monk seal. NMFS said it would work with the State of Hawaii to develop a suitable plan for the protection of the monk seal until a jurisdictional dispute between the State and the Federal Government over certain inner reef waters can be resolved. Under State law, any commercial fisherman duly licensed by the State can engage in unrestricted commercial fishing in waters under State jurisdiction.

NMFS' Southwest Regional Office was then instructed to delineate a suggested critical habitat for the monk seal and to prepare an environmental impact statement for such designation.

In April 1978 the Marine Affairs Coordinator of Hawaii's Office of the Governor advised MMC that he could not support the designation of critical habitat 3 miles out from identified islands and reefs and that he also could not support restrictions on commercial fishing in State waters because information on this subject did not justify such actions.

In September 1978 MMC's Committee of Scientific Advisors expressed deep concern about NMFS's failure to initiate a comprehensive research program for the monk seal, and the Committee recommended that MMC convene a group of experts on the monk seal to develop a suitable research plan. The meeting was held in October 1978, with participants from NMFS, FWS, the State, and the academic community.

In January 1979 a proposed 5-year research plan was developed by a study group appointed during the October 1978 meeting. MMC's review of the plan disclosed that it identified general categories of research, but it failed to identify research priorities, logistical requirements, and support personnel requirements. MMC concluded that primary research on the monk seal should be to determine the cause or causes of the "observed population decline."

In an April 6, 1979, letter, MMC forwarded its comments and a copy of the 5-year plan to NMFS and advised it that although discussions and exchanges of correspondence had been going on since 1975, NMFS had accomplished little regarding the protection and recovery of the monk seal. MMC pointed out that NMFS had yet to act on MMC's recommendations to (1) convene a group of experts to serve as a recovery team, (2) develop a recovery plan, and (3) designate critical habitat for the monk seal. MMC said that pressures have increased recently to develop commercial fisheries and make other use of the monk seal habitat in ways that could adversely affect the monk seal.

In May 1979 NMFS advised MMC that it was shifting lead responsibility for the monk seal from its National Marine Mammal Laboratory in Seattle, Washington, to its Southwest Fisheries Center in Honolulu. The move, according to NMFS, was to recognize the geographical nature of the monk seal recovery program. NMFS said the Southwest Fisheries Center would be responsible for all research related to the monk seal and for completing a research plan that is to be an integral part of the recovery plan. NMFS said it had a budget of approximately $40,000 for monk seal-related

research in fiscal year 1979, but that there would be no funding in fiscal year 1980 because of budget cuts. NMFS said it intended to seek a substantial increase for monk seal research in its 1981 budget--it later requested $261,000 for this purpose for fiscal year 1981. Responding to MMC's recommendations, NMFS said that although it concurred with MMC's views on the need to develop a 5-year research plan and to initiate high-priority research, it was delaying action on these recommendations until a recovery team was convened, then it would give MMC a research plan schedule.

During and following its appearance before the Senate Committee on Appropriations in March 1979, MMC was asked to comment on the status of the Hawaiian monk seal and what action it would take if given additional research funds. MMC told the committee that it could usefully invest $100,000 for research on the monk seal in fiscal year 1980. Shortly thereafter MMC was told that it would get a special appropriation of $100,000 for monk seal studies. In March 1980 MMC transferred $50,000 to NMFS to continue and expand monk seal population studies and other research that was identified in the meeting MMC convened in August 1979.

In May 1979 NMFS said the draft environmental impact statement concerning critical habitat designation would be distributed to interested parties for their review and comment about June 15, 1979. It also said that preparation of a draft recovery plan would begin about July 1979 and be completed within 12 months.

In carrying out its mammal research activities, NMFS requested the State of Hawaii in August 1979 to grant it a permit to "tag" eight adult male seals at Kure Atoll 1/ (one of several monk seal locations) for scientific research purposes. The State concluded that such taking, which would involve testing radio transmitter and other equipment on the seals, was not warranted and denied the permit request. The State said it did not question the worthiness of the project but contended that the project would not directly contribute to the management and recovery of the frail monk seal population at Kure. The State also said that such tests and research activities requiring direct contact and handling of the precarious monk seal population, as is found on Kure, are contrary to State law and regulations governing the protection

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1/In 1952 Kure Atoll was restored to the possession of the territory and subsequently to the State of Hawaii by Presidential Executive Order. In 1978 it was designated as a State Seabird Sanctuary and the monk seals are protected under State law.

and conservation of Hawaiian monk seals and could further jeopardize the existence of an endangered seal population. The State suggested that the project be conducted on a healthy seal population elsewhere that would be resilient enough to recover from any adverse impact from the project.

The Chairman of the State's Board of Land and Natural Resources said that, as manager of Kure Seabird Sanctuary for the people of Hawaii, he was compelled to take a more restrictive stance on the "taking" of Hawaiian seals at Kure Atoll than NMFS. Subsequently, as part of its research efforts supported, in part, and recommended by MMC, NMFS initiated a "tagging" program at another location not under State control.

In February 1980 NMFS distributed its draft environmental impact statement on the designation of critical habitat for review and comment. During public hearings in April 1980 to solicit views on MMC's proposal to establish critical habitat for the monk seal, the State's Marine Affairs Coordinator, other State officials, and members of the Western Pacific Regional Fisheries Management Council, objected to the designation of critical habitat. Speaking on behalf of the Council, a member said the draft environmental impact statement lacked supportable evidence to show that designating critical habitat would help increase the monk seal's population. What was needed, according to State and Council officials, was more research and studies to recognize, among other things, the economic impact on fisheries. State representatives said that a critical habitat designation should not be considered until the monk seal recovery team has completed its work. On the other hand, conservationist groups such as the Sierra Club said that designation of a critical habitat is needed at this time because the monk seal population is at a critical level and the results of additional studies or research might come too late to save it.

As of December 1980 NMFS had not specifically determined the need for or the boundaries of a critical habitat for the Hawaiian monk seal. Accordingly, many of the issues and questions associated with the management, control, and recovery of the monk seal remain unresolved and unanswered.

In March 1980 NMFS said it reprogramed $118,000 for monk seal activities in 1980. A monk seal recovery team was formed, and the first meeting of the team was convened at the Honolulu Laboratory of the Southwest Fisheries Center on April 26, 1980.

We discussed the status of the monk seal management program with NMFS officials in December 1980 and were advised that a draft of the recovery plan would be completed by June 1981--nearly a year later than NMFS had originally estimated.

The State of Hawaii's Department of Land and Natural Resources informed us in March 1981 that it views NMFS' recent actions--shifting of lead responsibility for the Hawaiian seal from NMFS' National Marine Mammal Laboratory to its Southwest Fisheries Center and the formulation of a Hawaiian monk seal recovery team--as positive steps in the right direction. The State also said it intends to develop and optimally utilize the fisheries resources in the northwestern Hawaiian Islands and it

> "* * * continues to oppose the establishment of 'critical habitat' for the Hawaiian monk seal because: (1) little is known about the ecology and habitat requirements of the seal; (2) 'critical habitat designation' is an attempt to restrict human activity, e.g. fisheries development in the NWHI [northwestern Hawaiian Islands]; and (3) it adds another layer of red-tape to an already burgeoning federal bureaucracy to even such matters as required monk seal research."

Conclusions

MMC and its scientific advisors believe that the Hawaiian monk seal is one of the most endangered of all marine mammals and is in danger of extinction. According to MMC, classifying the monk seal as threatened and endangered is not enough to save it. What MMC and some others believe is needed is to designate critical habitat and take such other research and management steps as may be appropriate to protect this species. This matter was first raised in 1976--in 1980 it still had not been resolved.

While there are and most likely will always be differences of opinion between interested parties, such as the State, fishery management councils, Federal regulatory agencies, environmentalists, and others over issues, such as the need for or the boundaries of a critical habitat, there is, on the other hand, almost unanimous agreement on matters such as the need for more information or additional research and studies to establish a management plan that will, to the extent possible, recognize the interests of all parties. Although the species was declared endangered in November 1976, a recovery team, which is usually a necessary first step to develop a suitable recovery plan, was not formed until early 1980. The latest estimate for the preparation of a draft recovery plan is June 1981--nearly 1 year later than the first estimate.

MMC and its scientific advisors have frequently made suggestions and recommendations to NMFS on the need for

actions to protect and aid in the recovery of the monk seal. MMC also had been successful in obtaining additional research funds, part of which it transferred to NMFS to continue and expand monk seal population studies.

Although NMFS has been slow in responding to MMC's recommendations to establish an effective management plan, it has begun to respond. For example, it has established an operational recovery team, prepared and distributed for review and comment an environmental impact statement on a critical habitat designation, reprogramed $118,000 in fiscal year 1980 funds to be used for monk seal research, and made a commitment to develop a suitable recovery plan. These are encouraging steps toward ultimately developing a suitable management plan for the recovery and preservation of the monk seal. Failure to take such action at an early date, however, tends to frustrate and unnecessarily stress working relationships between Federal managers on the one hand and State, local, and private interest groups on the other. It is too early to say whether the lack of timely action has caused irreparable damage or seriously impaired the opportunity for a full recovery of the species and removal of the species from the threatened and endangered list.

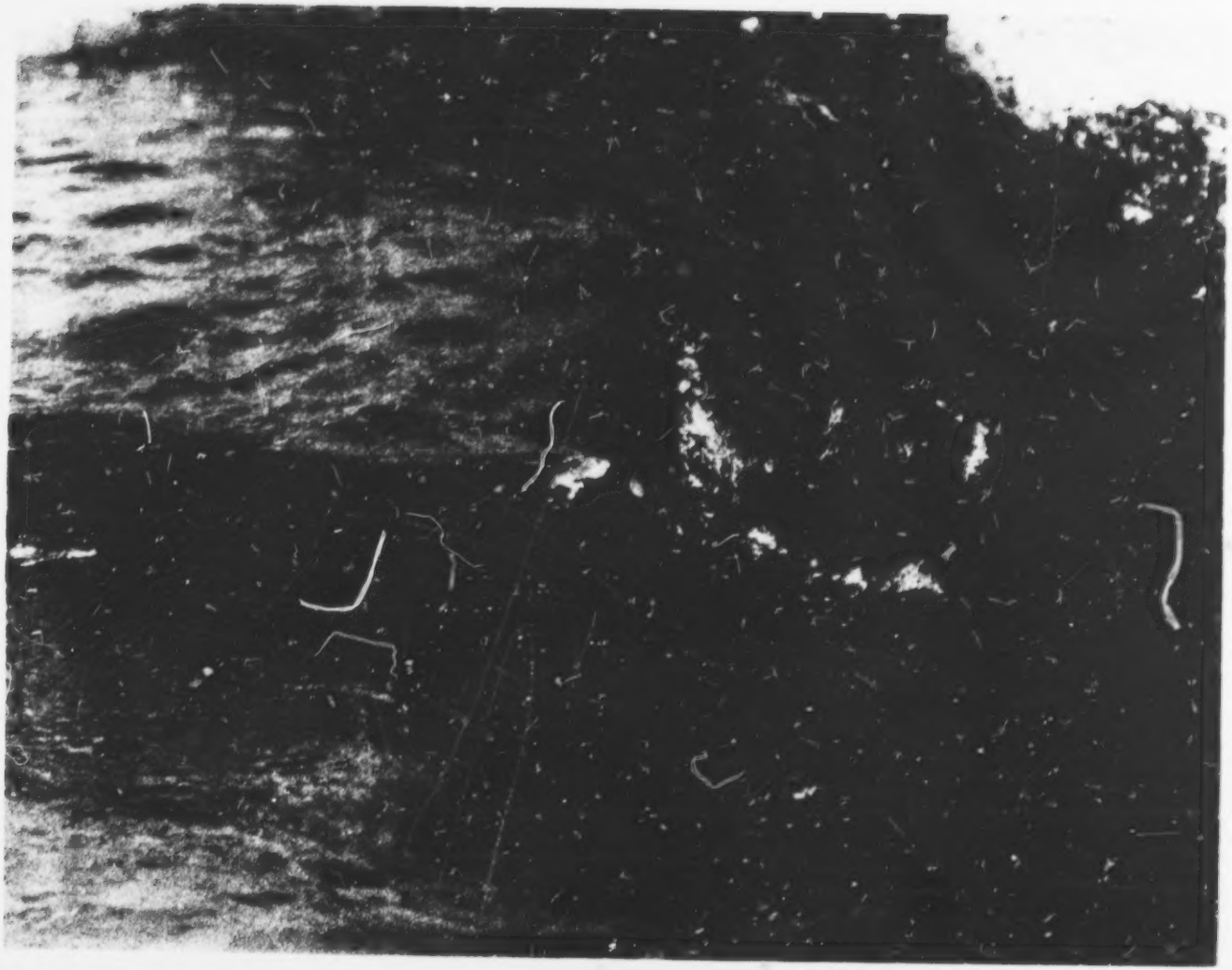
We believe that in situations such as this where there is general agreement on the need for development of additional information and formation of a recovery team to develop a recovery plan, the Federal regulatory agency--in this case NMFS--should act in a more timely and responsive manner to effectively implement MMPA.

Recommendation to the Secretary of Commerce

To more effectively accomplish MMPA and ESA objectives, we recommend that the Secretary direct the Administrator, NOAA, to give priority attention, with appropriate direction and level of commitment and funding, to resolving those issues and carrying out those functions, such as establishing recovery teams and developing recovery plans, which facilitate timely development of suitable management programs to encourage and accomplish species recovery.

THE CALIFORNIA SEA OTTER--
A THREATENED SPECIES

Sea otters (see p. 68) are valued for their fur and were nearly hunted into extinction around 1900. In 1911 the International Fur Seal Treaty between Japan, Russia, Great Britain, and the United States provided sea otters protection from hunting. The Fur Seal Act of 1966, which implemented the current North Pacific Fur Seals Convention, provides protection to sea otters on the high seas.



SEA OTTER

Source: U. S. Fish and Wildlife Service

California passed legislation in 1913 making the sea otter a fully protected mammal. Under State protection, the sea otter expanded from a population of about 50, located primarily at Point Sur, California, to an estimated 1,800 in 1976, covering a coastal range of nearly 160 miles. (See map on p. 79.) Today, the otter's range continues to expand but there are differing opinions as to the exact number that exist along the California coast. Population estimates are not sufficiently precise to determine whether the population is increasing, decreasing, or stabilizing. The otter is currently confined to a relatively small segment of the central California coastal area. (See map on p. 80.)

Management of sea otters has been the subject of controversy for about 30 years in California. Generally speaking, the problems and disputes associated with the Federal/State management of this mammal can be summarized as a conflict between sea otter interest groups and shellfish fisheries, primarily commercial fishery groups. Sea otters eat abalone 1/ and other shellfish that are of significant commercial and recreational importance. One group which includes California's Department of Fish and Game and commercial and sport fishing interests support restrictions on the sea otters' range (habitat) as well as their numbers. Another group, headed by conservationists such as the Sierra Club and the Friends of the Sea Otter, supports expanding the sea otter's range and increasing its population.

In 1968 the California State Legislature established a program for sea otter research. The program was to gather information to manage the otter and to provide some relief for abalone fishermen. The cornerstone of the State's policy is and has been to limit the otter's range. During 1969-72 the State supported various research activities to gather information on the otter. These included aerial census taking, capturing and tagging, and an experiment that involved relocating otters within their range to help relieve pressure on the abalone fisheries.

Because the sea otter population was small and considered to be particularly threatened by a potential large oilspill, MMC and other interested groups requested that it be designated as threatened under ESA. In January 1977 FWS designated the California sea otter as threatened.

1/A rock clinging mollusk (shellfish) that has a flattened shell slightly spiral in form.

Return of management to the State

With MMPA's passage marine mammal management became a Federal responsibility and the Interior was given responsibility for the sea otter.

In August 1974 the California Department of Fish and Game submitted a management plan to the Secretary of the Interior and requested a waiver of the moratorium established under MMPA on the taking of sea otters. The State also requested that management of the sea otter be returned to the State. The plan called for a program to restrict the otter to a range of about 150 miles of the California coastline between Seaside and Cayucos, which is the range for most of the California otters. Such restrictions were aimed at providing relief for commercial abalone fisheries. Differences of opinion still exist, however, between various interest groups as to whether sea otters or overfishing by man was responsible for the decreases in the amount of shellfish being caught. Conservationists maintain that the decrease is a result of continued overharvesting by fishermen and that shellfish (abalone, clams, and sea urchins) were significantly depleted long before the otter arrived on the scene.

The proposed waiver and return of management to the State was opposed by the Friends of the Sea Otter, an organization founded in 1968 to protect the otter, because they felt that the State's plan to confine sea otters in specific locations would make the otter population extremely vulnerable to catastrophies such as oilspills. They added that overcrowding and eventual starvation of the otter would follow. They believe that the otter's range should not be restricted and that natural expansion of the range should be permitted.

MMC also opposed the State's plan. In its evaluation of the plan MMC said:

--The plan emphasized containing the sea otter population to protect shellfish, not to protect sea otters.

--The plan provided for removing sea otters outside the designated range, but contained no clear proposal as to how these otters were to be used.

--The proposal to move (translocate) 1/ animals would only be acceptable to MMC if it resulted in the establishment of a new colony of sea otters.

1/Transfer part of a mammal population to a new location.

The Interior reviewed the State's plan and made the following comments:

--The proposal did not sufficiently show that suitable habitat had been located for reintroducing sea otters, or that it would be practical to move sea otters into such areas.

--Insufficient emphasis was placed on evaluating the total effect of sea otters on the nearshore environment.

--The proposal to restrict sea otters to a small percentage of their historical range appeared to be based on the direct effect sea otter feeding has on invertebrates (shellfish).

The Interior suggested a compromise between the State's proposal to limit the sea otter and the position held by the Friends of the Sea Otter who favored expansion. FWS said that the State should establish shellfish reserves and remove sea otters from these areas and translocate them to other selected sites to speed up the repopulation of the species. In January 1976 the State submitted a revised plan to the Interior.

In May 1976 (before the State's plan was approved) the State requested FWS to grant it a scientific research permit 1/ as an interim measure so the State could conduct research on the sea otter. This was suggested by FWS in June 1975.

In June 1976 the State withdrew its application for a waiver of the moratorium on the taking of marine mammals. The State had determined, after consulting with FWS and MMC, that its research goals could be achieved under the authority of a scientific research permit. The State's application for a research permit was amended three times and was finally approved in August 1977--about 16 months after it had initially been submitted to FWS.

1/Under MMPA one exception to the moratorium on the taking and importing of marine mammals and marine mammal products is that permits can be issued by either the Secretary of Commerce or the Interior (depending on the species) for the taking of marine mammals for the purpose of conducting scientific research or for public display. Prior to issuing a permit, MMC, in consultation with its scientific advisers, reviews the application. (See app. X for a schematic presentation of the Federal permit review process.)

Withdrawal of the waiver request, however, did not affect the State's request for the return of management of the species, which was still pending in April 1981. FWS officials told us that management could be returned to the State if the State's laws and regulations were consistent with MMPA and said they had advised the State of this in March 1977. State officials said that as long as the sea otter is classified as threatened and the State will not be granted a waiver of the moratorium there is no urgency to change State laws and regulations to conform to MMPA.

MMC's role and the need for FWS to develop a suitable recovery plan

In May 1979 MMC and its scientific advisers met with FWS officials, State officials, and others to discuss local conflicts and related issues concerning management, conservation, and control of the sea otter. FWS said that although it had treated the sea otter as a low priority, it was now giving higher priority to the otter and would initiate action to develop a suitable recovery plan. FWS' Acting Associate Director for Wildlife Resources expressed concern at the meeting when he learned that FWS did not have an active recovery plan and did not have a team to prepare a plan. This was about 2-1/2 years after FWS had designated the otter as threatened.

In August 1979 MMC asked FWS to provide it information on who would prepare the plan and the completion schedule for the draft and final versions. MMC emphasized that the plan should be designed to increase the sea otter population to its optimum sustainable population and not just to get the otter off the threatened list. MMC said that it would also be desirable to assign one individual overall direction and coordination responsibility for FWS efforts because several groups within Interior were charged with various responsibilities for managing marine mammals.

MMC pointed out that FWS did not have a program and had not developed a coordinated strategy to resolve major problems on sea otter management. MMC said that actions to resolve sea otter issues have been the subject of "inconclusive and unproductive debate." MMC also said that an

orderly and integrated compilation of available information (map and accompanying text) to provide a data base on the sea otter, its available habitat, and potential conflicts with human activity should be completed as soon as possible and not delayed until the recovery plan is completed and approved.

In December 1979 MMC convened a meeting of representatives from FWS, the California Department of Fish and Game, and the State's Sea Otter Scientific Advisory Committee to discuss sea otter issues and to reach a consensus on a process to resolve issues and to continue cooperative efforts and provide for regular consultations. At the meeting the participants agreed that it would be desirable for each group to designate a principal contact person.

FWS' Sacramento, California, Area Office Manager recognized, as did MMC, the need for an official central spokesperson. In a January 1980 memorandum to FWS' Regional Director, he stated:

> "It has long been one of the CDFG's [California Department of Fish and Game] contentions that the FWS has not provided proper guidance for the SSO [Southern sea otter] recovery effort. This is a legitimate complaint because the responsibility for directing the effort has never been located in any one office. CDFG has had the problem of contacting our Washington office, our researchers, our Regional Office, and our Area Office and not one of these offices has the authority to speak for the FWS on SSO policy. CDFG's frustrations are understandable. There has to be one office in the FWS that can speak on SSO policy and has the time to direct and coordinate the SSO recovery effort."

In April 1980 FWS designated its Sacramento Area Office Manager as the sea otter spokesperson.

Regarding the development of the recovery plan, MMC said in December 1979 that a "full" response had not been received from FWS on its August 23, 1979, letter calling for FWS to initiate action to achieve ESA and MMPA goals as they relate to the sea otter and to address measures to resolve fundamental issues concerning the sea otter/fishing conflict.

Efforts to develop a recovery plan had been delayed because FWS funds were not made available for this purpose until fiscal year 1980. In December 1979 FWS officials

said they expected to have a draft recovery plan available for technical review in March 1980. FWS said that after this review, it planned to prepare the plan for "agency review" (policy and administrative consideration) pursuant to developing a final plan. FWS estimated that the final plan would be completed by the end of calendar year 1980. The ultimate goal of the plan was to consider all relevant factors to obtain and then maintain the optimum sustainable population for the sea otter. However, the initial focus, according to FWS, would be to get the sea otter off the threatened list.

In June 1980 FWS submitted its technical review draft of the recovery plan to all interested parties. MMC advised FWS, in a July 10, 1980, letter, that while the draft was a good starting point for plan development, it was "incomplete." MMC pointed out that to be acceptable the plan would require a great deal of work, including the addition of appendixes setting forth specific action plans such as those described in the earlier MMC comments on the manatee recovery plan--comments which MMC suggested that FWS distribute to all parties involved in developing the sea otter plan. MMC said its comments and recommendations on the manatee plan provided a great deal of useful information that would be helpful in developing a sea otter plan. MMC again asked that FWS summarize all relevant information available on sea otters, such as their historical distribution and density, biological productivity, etc., which could then be used as a data base for future decisions on protecting and conserving sea otters.

The California Department of Fish and Game, in reviewing FWS' draft recovery plan, pointed out in a July 7, 1980, letter, that it was particularly disappointed that the plan failed to adequately address some of the specific issues and resource conflicts which are of major concern to the State. 1/ The State pointed out that basic questions critical to future management of the otter, such as optimum sustainable population, multiple use of resources, and translocation criteria, must immediately be resolved. The State disagreed with FWS that the highest priority program is to continue biological research programs indefinitely to develop more scientific information. The State said successful translocation could be achieved with existing scientific knowledge and added that such action should be taken as soon as possible.

1/FWS advised us in March 1981 that its technical review draft of a recovery plan is for the review of biological considerations only and that its agency review draft is to address other aspects of recovery such as resource conflicts and State, Federal, and private concerns.

After reviewing the comments received from MMC, the State, and others, FWS decided that a second technical review draft would be needed and that a small group of sea otter experts should be formed to assist FWS in developing the plan. The second draft, which was to be completed in September 1980, was released for comment on January 2, 1981. FWS said that it had been delayed because the working group that assisted FWS in developing the plan could not meet until October 1980. FWS estimated that the final plan would not be finished until late 1981.

MMC said this timeframe for the final recovery plan was unacceptable because steps to help expedite recovery activities could not wait for the plan's completion. In December 1980 MMC recommended specific steps to FWS to achieve the first translocation of sea otters. MMC's Executive Director informed us that MMC believes that certain activities such as those described in its August 1979 letter should be initiated now, even before a recovery plan is finalized.

Translocating California sea otters

Translocating otters to one or more areas outside the present sea otter range in California could help to reduce the risk that an oilspill will harm all or a major part of the existing population and may expedite recovery of the population to its optimum sustainable population. There is, however, no agreement on where the colony should be started. Three important factors to consider in determining whether a translocation or translocations will be desirable are

--the benefits with respect to protecting and encouraging recovery of the population;

--the effect that removing otters might have on the distribution, productivity, and growth of the existing population; and

--the negative and positive effects of sea otters on sport and commercial shellfish fisheries and other components of the near-shore ecosystem and the tourist industry.

At the July 24-25, 1980, meeting MMC convened to discuss sea otter issues, it was agreed that FWS, in consultation with the California Department of Fish and Game and other interested agencies, will compile and evaluate relevant biological/ecological information to identify and rank possible transplant sites in California, Oregon, and Washington, as well as, British Columbia and Mexico. It was also agreed that when possible transplant sites in

California are identified, the California Department of Fish and Game will provide socioeconomic information on each of the sites.

The State and MMC told us they had not been consulted concerning the offshore ecological studies that are currently being conducted by FWS near San Nicolas Island in California. MMC had advised FWS in August 1979 that priority attention should be directed to compiling and combining available relevant data and studies on the sea otter before initiating any work on future translocation sites. Both the State and MMC expressed concern that FWS has, in effect, determined already that sea otters will be transplanted to the San Nicolas Island area.

The Director, California Department of Fish and Game, in a September 20, 1979, letter to FWS, stated the following:

> "I have communicated to you several times our willingness and desire to participate in identifying potential transplant sites. This task is included in our project agreement funded through the Fish and Wildlife Service under the Endangered Species Act; but it is intended to be a cooperative effort, and we are waiting for your agency to take the lead.
>
> "In light of the above, I am disturbed that you have begun a large-scale ecological baseline study at San Nicolas Island * * * in preparation for moving otters there. It appears that you have skipped the logical step of putting together the data base as suggested by John Twiss [Executive Director - MMC], and that you have unilaterally chosen a transplant site in spite of our request to be involved in the decision."

In its December 5, 1979, response to the State, FWS stated that it had no definite plans to translocate sea otters to San Nicolas Island. FWS said that it thought it had made it clear to the State in past and ongoing discussions relating to FWS's sea otter research plans (including the San Nicolas Island work) that it would not designate San Nicolas as the chosen translocation site without the concurrence of the Department of the Navy and the active support and cooperation of the State and other concerned parties.

FWS pointed out that the major objective of the San Nicolas study is to provide ecological information to better judge how sea otters affect the structure and dynamics of nearshore marine communities if they are introduced into that area. FWS said it recognized that San Nicolas is only one site that might have habitat suitable for sea otters, and it expected to evaluate other potential areas before any translocations are attempted. FWS also said that until analyses of all potential sites are completed, it viewed the San Nicolas Island area as an excellent place in which to gather needed data. FWS estimated that this study, which began in fiscal year 1980, will cost about $481,000 through fiscal year 1983.

MMC suggested that since an oilspill could occur at any time, a decision on otter translocation should not be deferred until the study is completed. MMC said that everything possible should be done to expedite the identification and evaluation of transplant sites, and that the revised draft of FWS' recovery plan should include information on whether, where, when, and how sea otters should be transplanted to areas outside their present range.

Conclusions

It is apparent that there are significant differences of opinion as to the type of action that needs to be taken and in what time frame to resolve the issues pertaining to management of the California sea otter.

The State, in raising questions as to whether the sea otter is, in fact, threatened, pointed out that before MMPA's passage, the California sea otter, while under State management, flourished and increased from a low of about 50 in 1913 to approximately 1,800 in 1976.

California pointed out that management terms such as "optimum sustainable population" are not clear in the case of the sea otter (as is true with other marine mammals in other States) and make effective management difficult.

FWS agreed that only low priority had been given to resolving sea otter management conflicts. FWS also has been slow to initiate action to develop and complete a recovery plan and had not, for some time after the need became apparent, assigned a central spokesperson to coordinate FWS and other Federal and State activities and to organize research and management plans.

FWS has taken some steps to develop a recovery plan and submitted a draft plan for comment in June 1980. The plan completion date, however, is estimated at sometime in

late 1981--which is almost 5 years after the Federal Government designated the sea otter as a threatened species.

MMC created, organized, and convened a steering group to establish a coordinated approach to resolve sea otter problems. MMC also provided guidance to Federal and State officials for planning sea otter research and funded a number of sea otter studies.

Although FWS has taken steps to accumulate baseline data at locations that may be suitable for translocation of sea otters, State and MMC officials said they had not been consulted before these studies were started. The basic conflicts between California sea otter groups and fisheries remain unresolved. The State's August 1974 request for return of management is still pending.

Although FWS has made progress, we believe that higher priority attention is needed to (1) help resolve questions and issues at State and local levels on such matters as the effect that otters may have on shellfish and (2) expedite a suitable recovery plan to have the otter removed from the threatened list and then to have it reach the optimum sustainable population level.

Recommendation to the Secretary of the Interior

To expedite the sea otter recovery plan, we recommend that the Secretary require the Director, FWS, to work more closely with MMC, the State, and others to resolve the biological and social problems relating to issues, such as optimum sustainable population, the multiple use of coastal resources, and the development of translocation criteria to establish new or separate locations for the sea otter.

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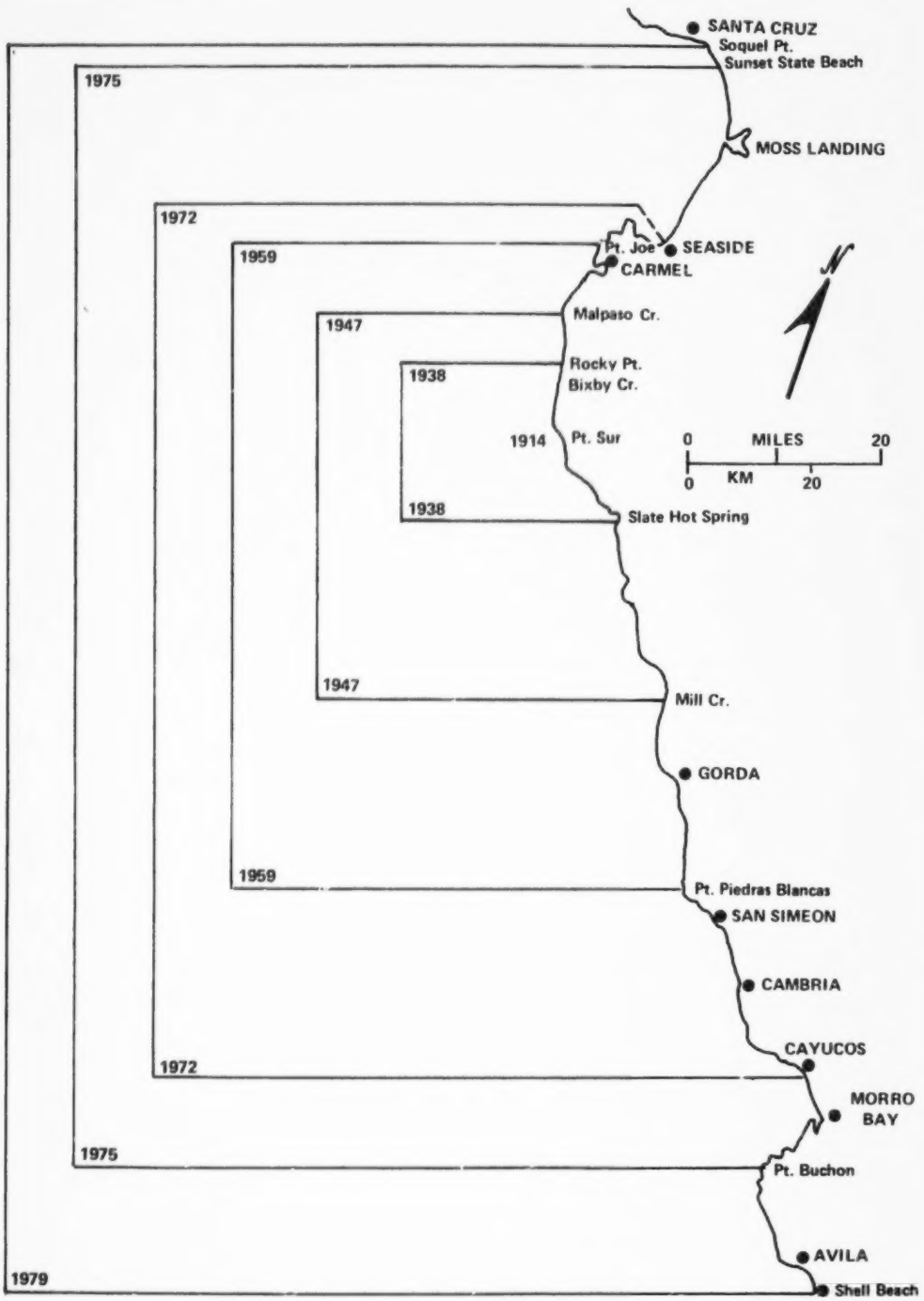

ESTABLISHED SEA OTTER RANGE ALONG CALIFORNIA COAST IN 1914, 1938, 1947, 1959, 1972, 1975, AND 1979.

Source: Adaptation of map provided by U.S. Fish & Wildlife Service, DOI (from Technical Review Draft of the California Sea Otter Recovery Plan)

SHADED AREA INDICATES ESTABLISHED SEA OTTER RANGE (APPROXIMATELY 150 MILES) ALONG CALIFORNIA COAST IN 1979.

CHAPTER 3

OTHER MATTERS AFFECTING

FEDERAL MANAGEMENT OF MARINE MAMMALS

Management of marine mammals is affected by apparently conflicting Federal legislation as well as the fact that more than one Federal agency has similar duties and responsibilities regarding marine mammals. Although it can be argued that relevant legislation--the MMPA and FCMA--should work together, the basic objectives and goals of the acts conflict and the degree or the extent to which each of these laws must recognize the goals and objectives of the other, if at all, is not clear.

Having a single marine mammal Federal agency would have certain advantages and, according to congressional reports on the MMPA (H. Rept. 92-707, Dec. 4, 1971 and S. Rept. 92-863, June 15, 1972), will be examined in the future. Split jurisdiction at the Federal level has led to delays on the part of the Federal Government when asked to grant States certain management responsibilities in accordance with the provisions of MMPA and similar, if not duplicative, functions by Commerce and the Interior.

MARINE MAMMAL MANAGEMENT-- DIVIDED JURISDICTION AT THE FEDERAL LEVEL

Under the provisions of MMPA, two Federal agencies--Commerce and the Interior--separately perform the same duties and responsibilities for species placed under their jurisdiction. According to the House and Senate reports, jurisdiction was split because the agency assigned was better equipped to deal with the specific animals. It was anticipated, however, that the authority would ultimately be consolidated in one agency.

The Secretary of Commerce is responsible under MMPA for members of the order Cetacea (whales, dolphins, and porpoises) and for members, other than walruses, of the order Pinnipedia (seals). The Secretary of the Interior is responsible for all other marine mammals (walruses, sea otters, marine otters, polar bears, dugongs, and manatees). The issue of split jurisdiction tends to complicate marine mammal management as it had in the State of Alaska's request for return of management for nine different species--six under Commerce's jurisdiction and three under the Interior's jurisdiction (see pp. 18 to 23).

Also, certain mammals are under Commerce's jurisdiction when in the water and under the Interior's jurisdiction when on land. An example is the Hawaiian monk seal whose habitat while on land is a part of the National Wildlife Refuge that is controlled by FWS.

MMC, in its 1979 annual report, pointed out that Alaska's request for a waiver on the taking of the nine species and a return of management to the State was subject to the jurisdiction, consideration, and decision of two separate Federal agencies, and this compounded the problems associated with the State's request.

A review of MMPA's legislative history shows the rationale for splitting marine mammal management responsibilities between the two agencies. Both the House Committee on Merchant Marine and Fisheries and the Senate Committee on Commerce recognized the advantages in placing all marine mammals under the aegis of a single new agency to manage the Nation's natural resources. These committees expressed a desire to reexamine the issue of consolidating marine mammal management within a single agency if the often-proposed Department of Natural Resources is not established in a reasonable period of time.

We discussed this matter with staff of the Subcommittee on Fisheries and Wildlife Conservation and the Environment, House Committee on Merchant Marine and Fisheries, and were informed that split jurisdiction and its affect on marine mammal management was a possible subject for discussion during hearings tentatively scheduled for 1981.

Conclusions

It is apparent that split jurisdiction between Federal agencies has compounded certain problems associated with States' requests for return of management in cases where the species are under the jurisdiction of different agencies and, understandably, has increased the time and expenses associated with deciding on such requests because two agencies must hold formal hearings and conduct similar activities required under MMPA. To determine the merits and/or shortcomings of such split responsibility would require a detailed review of all related management aspects. Nevertheless, we believe that the information in this report on specific species, such as the walrus, should be helpful to the appropriate congressional committees as they pursue this subject in the future.

CONFLICTS BETWEEN MARINE MAMMAL MANAGEMENT OBJECTIVES AND FISHERY CONSERVATION GOALS NEED TO BE RESOLVED

There are apparent management conflicts between the MMPA (to protect and preserve marine mammals to their optimum sustainable population) and the FCMA (to manage fishery resources to provide optimum benefit to the Nation in terms of food production). If marine mammals feed on some fish and compete with other fish for food, the objectives of one of the acts may need to give way to the other at some point. Neither act clearly requires considering the objectives of the other in striving to meet its own objectives.

MMPA states that the primary objective of marine mammal management should be to maintain the health and stability of the marine ecosystem and whenever consistent with this primary objective to obtain and maintain the optimum sustainable population of marine mammals. The relevant House and Senate reports (H. Rept. 92-707, Dec. 4, 1971; S. Rept. 92-863, June 15, 1972, and H. Conf. Rept. 92-1488, Oct. 2, 1972), in describing MMPA's purpose, speak not in terms of protecting the marine ecosystem, but in terms of protecting marine mammals. In explaining that the primary objective of marine mammal management is to maintain the health and stability of the marine ecosystem, the House report stated that "the animals must be managed for their benefit and not for the benefit of commercial exploitation."

MMPA defines optimum sustainable population as:

> "* * * the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the optimum carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element." 16 U.S.C. 1362(9).

While one would have to agree that marine mammal management must generally be consistent with maintaining the marine ecosystem as a whole, we do not believe this means that the interests of the mammals must be balanced against each competing interest, such as fish, which is part of the ecosystem. The Federal District Court for the District of Columbia has said that other interests must be served only after

protection of the mammals is assured. 1/ The overriding purpose of FCMA, on the other hand, is to conserve and manage fishery resources through fishery management plans that will achieve and maintain the optimum yield from each fishery. "Optimum" is defined as follows:

> "The term 'optimum', with respect to the yield from a fishery, means the amount of fish--(A) which will provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities; and (B) which is prescribed as such on the basis of the maximum sustainable yield from such fishery, as modified by any relevant economic, social, or ecological factor." 16 U.C.S. 1802 (18).

Optimum yield then is maximum sustainable yield (primarily a biological term) which is achieved when the annual catch from a fishery is at the highest level which can be sustained without harming the reproductive ability of the stock in question and which assures a similar level of harvest in the next year, as modified by certain factors such as economics and ecology. It was contemplated that the concept of optimum yield would account for such things as the interrelationship of different species of fish (that is, the effect that fishing for a particular fish has upon other species of fish), the economic well-being of commercial fishermen, the interests of recreational fishermen, and the welfare of the Nation and its consumers.

There is no specific reference in FCMA or its legislative history that determining optimum yield of a fishery should include consideration of the optimum sustainable population of affected marine mammals. Although such consideration would be permissible and desirable and might be implied from general references in the FCMA, such as the requirement that fishery management plans be consistent with other applicable laws, we do not believe it can be concluded that the Congress, in using the concept of optimum yield in FCMA, intended that marine mammal populations had to be considered. While there might be arguments supporting such a conclusion, it simply is not clear.

1/ Committee for Humane Legislation v. Richardson, 414 F. Supp. 297 (D.D.C. 1976), aff'd, 540 F. 2d 1141 (D.C. Cir. 1976).

MMC does not agree that the two acts are mutually conflicting and believes that the marine mammal interests and fisheries goals can be managed cooperatively. MMC believes that although FCMA requires fishery management plans to consider marine mammal interests, the plans thus far--as of December 1980, 14 plans had been approved--have failed to adequately or fully consider the provisions of MMPA.

We discussed this matter with NMFS officials who have basic responsibility for managing fishery resources under FCMA, including the approval of fishery management plans. We were told that marine mammals are, in fact, considered when fishery management plans are developed. They said they are currently drafting further instructions for the fishery management councils on how to consider marine mammals in the fishery plans and pointed out that the draft of the surf clam fishery management plan clearly shows that marine mammals are considered. However, they also pointed out that available data and techniques are not adequate to prepare fishery management plans on a full marine ecosystem basis.

These officials believed that MMPA and FCMA were not compatible because fishery resources must eventually be used for marine mammals or for human food needs. They also said that MMPA should be amended to bring it in line with ESA and similar legislation so that strong protection actions would be taken only when a marine mammal is classified as endangered. They also pointed out that MMPA is unlike any other legislation because it singles out marine mammals for special protection. For example, one can question the benefit to the ecosystem of allowing substantial population expansion of the walrus.

In September 1978 MMC contracted for a study 1/ to identify and evaluate actions by NMFS and the various fishery management councils to implement FCMA. The study concluded that, as a general rule, marine mammals were not considered when fishery management plans were developed, and it offered recommendations to achieve such consideration.

In April 1980 the North Pacific Fishery Management Council in testifying before the Subcommittee on Fisheries and Wildlife Conservation and the Environment, House

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1/Katherine A. Green Hammond, "Fisheries Management Under the Fishery Conservation and Management Act, the Marine Mammal Protection Act, and the Endangered Species Act," May 1980.

Committee on Merchant Marine and Fisheries, pointed out that while most resource management people do not believe that the acts' objectives are incompatible, the problem stems from the "definition" of optimum sustainable population as it is used by some Federal agencies and protectionist groups. The Council said the term is being increasingly defined as all the marine mammals the system (marine ecosystem) can possibly sustain even at the expense of a balanced management and a harvest of fishery resources to which the marine mammal species is closely interrelated and on which the species is frequently dependent. The Council also pointed out that it is working closely with MMC, NMFS, and the State of Alaska to define the complex interrelationships of the marine ecosystem and to identify areas where both immediate and long-term study is necessary so that management of living marine resources will be in line with FCMA and MMPA objectives.

Conclusions

In certain locations marine mammals consume commercially valuable fish species. This conflict exists, for example, in southeast Alaska and California between the sea otter and abalone and in the Bering Sea between the walrus and surf clam.

MMPA sets forth a national policy to encourage developing marine mammals to optimum sustainable population levels while maintaining the health and stability of the marine ecosystem. FCMA provides for the development, implementation, administration and enforcement of fishery management plans to conserve and manage fishery resources to achieve an optimum sustainable yield. In other words, if commercial fish species such as sea clams and abalone are managed and harvested to achieve FCMA goals of optimum yield, the food supply for certain marine mammals such as the walrus and sea otter conceivably would be reduced to a point where MMPA's goal of optimum sustainable population for marine mammals would not be achieved. Conversely, if the marine mammal population is permitted to increase to an optimum sustainable population level, FCMA's fishery resource goal of optimum yield might be impaired. Whether the goals and objectives of the two laws can effectively be accomplished in a cooperative manner is not clear and is the subject of much debate and differing opinions between interested parties such as the regional fishery management councils, NMFS, and various conservation groups.

We find no clear requirements in either FCMA or MMPA that one act should consider the objectives of the other. Nor

do we find any indications in the legislative history of either act that clearly convey congressional intent in this regard.

Recommendation to the Congress

Because FCMA is not clear as to whether, or to what extent, the interests of fisheries must give way to marine mammals and whether marine mammals must be considered in fishery management plans, we recommend that the Congress amend both the FCMA and MMPA to clarify the extent to which the interests of each law must be considered in fulfilling the objectives of the other.

CHAPTER 4

AGENCY COMMENTS AND OUR EVALUATION

On February 3, 1981, we requested written comments from MMC, Commerce, and the Interior on our draft report. We also requested comments from the States of Alaska, California, Florida, and Hawaii on sections of the draft report that pertained to marine mammal activities in these States.

Federal and State comments included a number of suggestions to improve the text by adding updated or revised information and making certain editorial changes. Some of the comments were useful for making improvements, providing greater clarity, and adding balance in the report. Other comments, however, either contradicted information we obtained earlier or were irrelevant or inaccurate.

The Federal agencies' summary responses and the States' comments, in their entirety, are included as appendixes I through VII. The States' comments were essentially suggestions of a technical or editorial nature. For Hawaii (see app. VII), the comments generally described the State's views and reasons for opposing establishment of a critical habitat for the monk seal. Accordingly, an evaluation of the States' comments is not necessary.

The Federal agencies, in some cases, disagreed with some of our conclusions and recommendations or questioned the report because they felt it did not deal with all the complexities of marine mammal issues or did not fully recognize Federal agencies' actions to protect or manage marine mammals. Such comments, together with our evaluation, are presented below for the three Federal agencies.

DEPARTMENT OF COMMERCE

In a March 16, 1981, letter (see app. I), the Acting Administrator, NOAA, said NOAA agreed with our recommendations to the Congress and the Secretaries of Commerce and the Interior on the need for improved Federal management and coordination of marine mammal management programs. NOAA also agreed with our recommendation to give priority attention to establishing a recovery team and plan to facilitate recovery of the Hawaiian monk seal. The Acting Administrator pointed out that NMFS has appointed a staff member to oversee, conduct, and coordinate monk seal research and has established a full-time position for the overall management of monk seal activities.

In commenting on our recommendation to the Congress (see p. 87) on the need to clarify the relationships between marine management objectives and fishery conservation goals, NOAA agreed that changes to the FCMA and MMPA could improve the effectiveness of marine mammal management. NOAA indicated, however, that the objectives of the two laws in its view are different but not necessarily inconsistent. NOAA said that there are differences in the approach to implementing the two laws but that such differences are resolvable and are being addressed by NMFS. We agree that the objectives of the two laws are not necessarily inconsistent, but the lack of clarity in the laws has resulted in the conflicting policies and disagreements discussed in chapter 3. We believe the best way to resolve the problem is with legislative action.

We found differences of opinion between fishery management officials and other interested parties as to whether the two laws could work cooperatively or whether they are in conflict with each other (see p. 85). We believe such differences and related uncertainties over the requirements of the laws regarding fishery development and marine mammal management have impeded the effective accomplishment of the two laws' objectives. For example, in a MMC-financed study completed in May 1980 (see p. 85), it was reported that fishery management plans have generally failed to adequately consider marine mammal needs and objectives. On the other hand, fishery managers whom we spoke to on this subject stated that their plans do, in fact, consider the needs of marine mammals. It is this type of dispute and difference of opinion that persists--some 5 years after FCMA passed--which, in our opinion, warrants clarification by the Congress as to the goals and objectives of both FCMA and MMPA to clarify the extent to which the interests of each law must be considered in fulfilling the objectives of the other.

DEPARTMENT OF THE INTERIOR

In commenting on our report (see app. II), the Interior stated that it is in general agreement with several of the findings and most of our recommendations. Interior officials told us the Department had no official position on our recommendation that the Secretary ensure that the proposed departmental reorganization for marine mammals provides a sufficiently high level of specific management emphasis to marine mammals and, to the extent possible, eliminates divided responsibilities between the various FWS offices.

The Interior said the report presentation did not adequately relate the difficulty and complexity of dealing with marine mammal issues when numerous States, Federal agencies, private interest groups, and the general public are constantly involved.

We disagree. The complexities of Federal marine mammal management are clearly discussed throughout the report. Not only are key issues relative to managing the individual species discussed, but the report points out matters that have and still are affecting Federal management of marine mammals in general, as indicated in the following examples.

Regarding the State of Alaska's longstanding request for the return of management of nine species, including the walrus, the report points out the factors that have impeded final resolution of the issues involved, including the fact that divided responsibility or split jurisdiction among Federal agencies have compounded the problems (see p. 18). The long-term dispute between the State of Hawaii and fishery interest groups on one hand and Federal agencies on the other is discussed regarding the major point of contention--designation of critical habitat for the Hawaiian monk seal (see p. 61). Problems related to the safety and future preservation of the California sea otter --an endangered species--because of offshore oil and gas exploration and a possible major oilspill are discussed along with FWS' efforts to identify a suitable translocation site for the California sea otter (see p. 75). The report also includes the views and comments of other interested parties, such as Friends of the Sea Otter (see p. 69).

As mentioned, the report includes a detailed discussion of the problems that affect Federal marine mammal management on a broader scale--not just by specific species. For example, the apparent conflict between the objectives of FCMA and MMPA concerning fishery management problems are discussed, and the report concludes that certain legislative actions are needed, including a clarification by the Congress of the two acts' objectives and certain management terms, such as "Native subsistence" and "wasteful" taking.

The Interior also said the report treats statements as facts when they are theories or suppositions. After receiving the Interior's written comments, we contacted Interior officials to get a clarification of this comment. We were told that the sea otter/shellfish issue and the "allegation" that FWS had not consulted with MMC and the State of California on the San Nicolas ecosystem studies presented undocumented allegations as facts.

Because the sea otter/shellfish issue is and has been one of the most widely publicized disputes in marine mammal management and has been discussed at length in a number of scientific journals and other reports, we do not understand the basis for this comment. As we point out on page 69, this issue has been the subject of controversy for over 30 years.

Further, in a May 1979 meeting of the MMC and its Committee of Scientific Advisors on Marine Mammals in San Diego, California, to discuss the California sea otter, the Chairman pointed out that "otters compete effectively with fishermen for shellfish." During the meeting FWS' Acting Associate Director for Wildlife Resources, discussing management and research efforts and describing the sea otter management situation from FWS' point of view, said the sea otter is not necessarily increasing but is spreading, and its expansion is creating a fairly serious problem due to competition with people who also depend on the otter's prey (e.g. shellfish) for a livelihood. Obviously, it is not accurate to characterize the sea otter/shellfish issue as theory or supposition, and we do not agree with the Interior that the issue is an undocumented allegation which we have treated as a fact.

In describing possible reasons for the decline of the abalone, the Interior stated in its comments that the decline may be due to some other factor, such as fishing by man, and not the sea otter. This was clearly recognized in the draft report (see p. 70). We stated, for example, that:

> "Differences of opinion still exist, however, between various interest groups as to whether sea otters or overfishing by man was responsible for the decreases in the amount of shellfish being caught. Conservationists maintain that the decrease is a result of continued overharvesting by fishermen and that shellfish (abalone, clams, and sea urchins) were significantly depleted long before the otter arrived on the scene."

Further, the problems that the State of California was having in working with management concepts, such as "optimum sustainable population" (which the Interior in its comments said should be clarified) led, in part, to our recommendation that the Secretary expedite development of the sea otter recovery plan by requiring the Director, FWS, to work more closely with MMC and the State to resolve the biological and social problems relating to issues such as optimum sustainable population, multiple use of coastal resources, and developing translocation criteria for the otter. This effort, in our opinion, would encompass additional research, if necessary (another point FWS said needs to be addressed), to resolve the basic sea otter/shellfish competition issue.

The Interior also stated that we presented undocumented theories as fact in discussing ecosystem studies on San Nicolas Island, California, which were being conducted to evaluate the possibility of translocating sea otters to this area. The report points out that FWS had not consulted with MMC and the State before proceeding with the studies.

After receiving the Interior's comments, we again contacted MMC officials who repeated what we had been told during the review--FWS had not consulted with them before initiating such studies. We also contacted the Director, California Department of Fish and Game, because the State had reported in a September 20, 1979, letter that FWS had unilaterally chosen a transplant site in spite of the State's request to be involved in the decision. The Director told us that the State had not been consulted by FWS before it had decided to proceed with studies on San Nicolas Island.

The Interior said the report focuses on single issues and ignores other efforts by various involved agencies with the resulting implication that Federal agencies have done very little for the species as a whole.

The report focuses on single issues where such issues represent significant matters, conditions, or circumstances that have or are impeding the progress of Federal/State management of marine mammals. For example, the lack of an aggressive FWS recovery program effort with respect to the recovery of the West Indian manatee in Florida is discussed, and FWS officials agreed that their efforts were not as aggressive as needed (see p. 53). However, even though the report focuses on single issues in some cases, it also recognizes that FWS has made some improvements recently because it hired a manatee recovery activities coordinator (see p. 50) and plans to make some organizational changes to give marine mammal management a more prominent position within the Interior (see p. 52).

Regarding other Federal agencies' actions, the report points out that NMFS has put forth a more direct and concerted effort on marine mammal management than FWS has, but hastens to add that NMFS does not have the large endangered species management responsibility that FWS has (see p. 16).

Finally, the report, in recognizing actions and efforts by Federal agencies, points out that MMC has been instrumental in coordinating research between Federal agencies and has supported (administratively and financially) activities pursuant to developing suitable management plans for marine mammals. We do not agree that the report fails to recognize efforts and accomplishments of Federal agencies relative to marine mammal management.

The Interior said we had not visited certain offices of the Interior during the audit and we had not provided the endangered species staff an opportunity to provide substantive input into the draft report. During our review, we contacted

numerous Interior officials, including endangered species office personnel and other Interior officials responsible for Office of Endangered Species activities in Washington, D.C., and at field locations we visited. For a full discussion of the objectives, scope, and methodology of our evaluation, see pages 12 to 15.

To obtain input into the draft report in line with our Office policy, we provided the draft report to interested agencies at the completion of our review. On February 3, 1981, we transmitted the draft report to the Secretaries of Commerce and the Interior, MMC, and the four States for review and comment. Their comments, where appropriate, have been incorporated into the report.

It should be noted also that on March 24, 1980, we solicited from the Director, FWS, information on FWS' actions or lack of action on the California sea otter and the West Indian manatee--both endangered species--which were the subject of controversy between MMC and FWS. On May 1, 1980, we received a response to our inquiry from FWS' Director. The information was used in preparing the draft report.

In discussing the MMPA and FCMA conflict, the Interior said that it concurs with MMC that the two laws are not necessarily mutually conflicting and that the marine mammal interests and fisheries goals can be managed cooperatively. The Interior said that before a recommendation is made to the Congress to change the MMPA or FCMA objectives, FWS, MMC, and NMFS should more closely examine the nature of the "alleged" conflict.

Our recommendation (see p. 87) does not call for the Congress to change the objectives of either MMPA or FCMA. For the reasons we stated in chapter 3 (see p. 83) and mentioned in our evaluation of NOAA's comments (see p. 89), we believe the objectives of MMPA using the management concept of "optimum sustainable population" and the goals of FCMA using the economically based concept of "maximum sustainable yield" need to be clarified to make it clear to what extent the interests of each law must be considered in fulfilling the objectives of the other. While a closer working relationship between FWS, MMC, and NMFS may be helpful in dealing with this conflict, it should be noted that MMC and NMFS have been concerned over this matter and have taken certain steps to help resolve the issue. Based on the results of our review, as we discussed on page 85, the ambiguity in the laws remains a problem in developing fishery

management plans. For example, in May 1980 a study report on the interrelationship between FCMA, MMPA, and ESA (see footnote on p. 85) was presented to MMC. This MMC-funded study was made to determine, among other things, what steps need to be taken to ensure that FCMA fishery management plans are ecologically sound and fully consistent with FCMA, MMPA, and ESA.

NMFS has prepared standards and procedures for identifying and resolving inconsistent approaches to fishery management under FCMA, MMPA, ESA, and the National Environmental Policy Act. These standards, dated February 11, 1981, have been prepared because the uncertainty surrounding administration of these laws has reached the point where their objectives are being questioned. Continued uncertainty may defeat the goals the Congress intended. It is not clear what additional efforts FWS has in mind when it suggests that FWS, MMC, and NMFS should more closely examine the nature of the "alleged" conflict. We subsequently contacted Interior officials to ascertain if they had performed any work to resolve this conflict from an FWS point of view and were told that no such work had been performed.

Although the Interior said it does not agree that the objectives and goals of FCMA and MMPA need to be clarified, it does believe that the apparent differences in the management priorities between the FCMA and MMPA should be legislatively clarified by defining the management concepts of "optimum sustainable population" (in MMPA) and "maximum sustainable yield" (in FCMA).

As discussed in the report, fishery managers responsible for developing FCMA fishery plans said that some Federal agencies and protectionist groups are interpreting "optimum sustainable population" to the detriment of a balanced fishery management and harvest of fishery resources (see p. 85).

In subsequent discussions with Interior officials, they agreed that a clarification of the basic goals and objectives of the two acts, which we recommended, would most likely cover clarification of the management terms of the two acts. They said other management terms such as "depleted" should also be clarified.

Interior officials stated that they generally agree with our recommendation calling for certain legislative changes that would permit some control over the Native subsistence harvest, for example, to help prevent a species from becoming depleted.

MARINE MAMMAL COMMISSION

In a March 5, 1981, letter, MMC provided comments primarily of a technical and editorial nature. The comments, for the most part, were useful in improving the presentation of certain issues and added additional balance to our discussion of MMC's role in the management of marine mammals. The comments did not, however, sufficiently address the report recommendations. Pursuant to our request, MMC agreed to provide additional comments on the recommendations. The comments were provided in a March 20, 1981, letter (see app. III).

Generally, MMC agreed with the recommendations. Regarding our recommendation that the Congress amend MMPA to allow the Secretaries of Commerce or the Interior, as appropriate, to exercise certain managerial controls over the Native subsistence harvesting of species such as the walrus when it appears that such steps may prevent its depletion or will assist in protecting the marine environment (see p. 29), MMC agreed that this needs to be addressed. MMC pointed out, however, that there would be a substantial burden upon the Secretaries to show that the population is "in danger of becoming depleted" or that the "regulation of native taking is necessary for the protection of the marine ecosystem." MMC also pointed out that the report does not appear to provide a basis for reliably predicting the number of animals taken by Natives, giving preference to subsistence users and then allocating any remaining portion of the permissible quota to other legitimate users.

Establishing a basis to reliably predict the number of animals that are or will be taken by Natives is beyond the scope and intent of the recommendation. The recommendation is to permit the responsible Secretary to exercise some managerial controls over unregulated hunting (not rigid quotas) pertaining to such things as the location, sex, and age of the species that will be taken (see p. 29). As the report points out (see p. 25), the Eskimo Walrus Commission, in the case of the walrus, expressed agreement with the need to set some type of flexible quota that will be based upon the biological conditions and status of the population.

We agree that it would be necessary for the Secretary to demonstrate that the population is in danger of becoming depleted or that the marine ecosystem is in danger and should be protected. Such determinations will vary from species to species and will be affected by individual conditions or the status of the ecosystem. Accordingly, such decisions, with

appropriate justification, would be a matter for the Secretary to determine in carrying out his or her responsibilities under the MMPA in cooperation with MMC, the State, and other interested and concerned parties.

On our recommendation to the Secretary of the Interior to work more closely with MMC, the State, and others to expedite completion of the recovery plan for the sea otter (see p. 78), MMC suggested that the recommendation be amended to emphasize the need to complete and compile certain data (maps and texts) as soon as possible and not delay this work until the recovery plan is completed.

In its detailed comments on our draft report, the Interior said that funding and implementing activities to benefit a listed species before a recovery plan exists is not a unique occurrence to FWS. FWS said it always proceeded with the work on recovery actions when necessary, regardless of the status of the recovery plan. Accordingly, we do not believe the recommendation needs to be amended. Further, the actions MMC identified can be emphasized by MMC in its future meetings and working sessions pursuant to expediting completion of the sea otter recovery plan, in line with our recommendation.

Finally, MMC said it does not believe legislative clarification of the FCMA and MMPA relationship is required at this time. MMC believes, however, that it would be appropriate for the Congress to first direct agencies to attempt to develop either guidelines or regulations to address any issues, and, only if this is not successful, to then proceed legislatively.

The authority to develop guidelines and regulations is within the legislatively established responsibility of the responsible Secretary under both FCMA and MMPA. NMFS' recently drafted standards and procedures for identifying and resolving inconsistent approaches to fishery management under FCMA, MMPA, ESA, and the National Environmental Policy Act (which describe the legal relationships between the several statutes), should serve a useful purpose as guidelines for implementing FCMA and MMPA. However, for the reasons we have stated in this and other chapters, we believe clarification of the goals and objectives of the two acts and their relationship, along with clarification of the basic management concepts of the laws, would be beneficial in administering and managing FCMA and MMPA in the future.

APPENDIX I

UNITED STATES DEPARTMENT OF COMMERCE
The Inspector General
Washington, D.C. 20230

6 APR 1981

Mr. Henry Eschwege
Director, Community and Economic
Development Division
U. S. General Accounting Office
Washington, D. C. 20548

Dear Mr. Eschwege:

This is in reply to your letter of February 3, 1981, requesting comments on the draft report entitled "Federal Efforts To Manage Marine Mammal Program Need Improvements."

We have reviewed the enclosed comments of the Acting Administrator, National Oceanic and Atmospheric Administration for the Department of Commerce and believe they are responsive to the matters discussed in the report.

Sincerely,

Frederic A. Heim, Jr.
Acting Inspector General

Enclosure

GAO note: Page references in appendixes I through VII relate to our draft report and may not correspond to page numbers in the final report.

APPENDIX I

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Washington, D.C. 20230

OFFICE OF THE ADMINISTRATOR

MAR 16 1981

Mr. Henry Eschwege
Director, Community and
Economic Division
U.S. Government Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Eschwege:

This is in response to your letter of February 3, 1981, requesting our review and comment on the draft report to the Congress entitled "Federal Efforts to Manage Marine Mammal Program: Improvements Needed."

Our comments on recommendations to the Congress and Secretary of Commerce follow:

Pages 28 and 29: Recommendations to the Congress and the Secretaries of Commerce and the Interior on the need for improved Federal management and coordination of marine mammal management programs.

We agree with these recommendations.

Page 65: Recommendation to the Secretary of Commerce on the Hawaiian monk seal.

We agree with the recommendation to give priority attention to the establishment of a recovery team and recovery plan to facilitate species recovery. The National Marine Fisheries Service (NMFS) established a recovery team in 1980 which has met numerous times. The team is scheduled to present a draft recovery plan in June 1981. The NMFS has established a full time position to oversee, conduct, and coordinate monk seal research and a full time position responsible for monk seal management.

Page 85: Recommendation to the Congress on conflicts between marine mammal management objectives and fishery conservation goals.

APPENDIX I

While concurring that some changes to the Fishery Conservation and Management Act and the Marine Mammal Protection Act could improve management effectiveness and lessen the administrative burden, we believe that the goals and objectives of the two Acts are different rather than inconsistent. However, differences in approach in implementing these two do exist. These are considered to be resolvable and are addressed in the enclosed memorandum. "Standards and Procedures for Identifying and Resolving Inconsistent Approaches to Fishery Management under the Magnuson Act, MMPA, ESA, and NEPA" which examines this issue in detail.

Other comments on the draft report follow:

Page 29, 2nd line under section titled THE BOWHEADWHALE-A DEPLETED AND ENDANGERED SPECIES should read:

"...from Commercial Whaling for more than 40 years, first under the Convention for the Regulation of Whaling of 1931 and then under the International Convention for the Regulation of Whaling of 1946."

Page 31, 1st paragraph, 4th line, should read:

"2,264" instead of "2,260."

First paragraph, 6th line should read:

"studies, however, performed by NMFS in 1980 confirmed the 1978 NMFS estimate."

Third paragraph, 1st and 2nd sentences should be combined to read:

"Management and regulation, including the establishment of subsistence take quotas, has been carried out under the auspices of the Whaling Convention Act of 1949 which implemented domestically the 1946 Convention in the same year that the International Whaling Commission met for the first time."

Page 32, 1st paragraph, add a fourth specific power of the IWC to read:

"--To adopt regulations with respect to the conservation and utilization of whale resources."

Page 32, 2nd paragraph, 1st sentence should read:

"The Commission consists of 25 member countries as of February 12, 1981."

Page 35, 2nd paragraph, 1st sentence should read:

" In February 1979 a panel of experts was convened in Seattle, Washington, by NOAA to examine . . ."

Page 36, 4th paragraph, 2nd sentence

Comment: In November 1977, NMFS did propose regulations under the authority of the MMPA, however, on January 30, 1978, these proposed rules were withdrawn. On March 6, 1978, NMFS proposed regulations under the authority of the Whaling Convention Act.

Page 38, 1st paragraph, 5th line should read:

". . . 1979, 1980, and 1981, NMFS budgeted $871,000, $743,000, and . . ."

Page 40, 1st paragraph, last word of last line should read:

"17 animals landed."

Page 40, 2nd paragraph, 3rd sentence should read:

"To carry out such studies and research, NMFS budgeted $871,000 for fiscal year 1979."

Thank you for the opportunity to review and comment on this document.

Sincerely yours,

James P. Walsh
Acting Administrator

Enclosure

APPENDIX II

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAR 20 1981

Mr. Henry Eschwege
Director, Community and
Economic Development Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Eschwege:

This responds to your letter of February 3, 1981, which transmitted for our review and comment a draft General Accounting Office (GAO) report entitled, "Federal Efforts to Manage Marine Mammal Programs: Improvements Needed."

The GAO report addresses marine mammals under the jurisdiction of both the Departments of Commerce and Interior; however, this response will address only those species under our jurisdiction except for Interior's involvement with the bowhead whale. Primary responsibility for marine mammals within the Department rests with the U.S. Fish and Wildlife Service, but we have also incorporated comments from the Bureau of Land Management, National Park Service, and U.S. Geological Survey.

Although our review of the draft report indicates general agreement with several of the findings, we find the report overly simplistic and single-minded in purpose. Generally, the report neglects to adequately relate the difficulty and complexity of dealing with marine mammal issues when numerous States, Federal agencies, private interest groups, and the general public are constantly involved. The report treats certain statements as facts when they are theories or suppositions at best or actually in dispute. These instances will be apparent in our enclosed detailed response.

The report also focuses on single issues, ignoring other efforts by the various involved agencies with the resulting implication that Federal agencies have done very little for the species as a whole.

APPENDIX II

We would like to also point out that at no time during the audit did the investigators visit the Office of Endangered Species, or interview the Chief of the Office, or offer the Endangered Species staff an opportunity for substantive input into the draft report.

Specific comments on the report are detailed in the enclosure. We hope they will be helpful in preparation of the final report.

Thank you for the opportunity to comment on this draft.

Sincerely,

Deputy Assistant Secretary - Policy,
Budget and Administration

Enclosure

APPENDIX III

MARINE MAMMAL COMMISSION
1625 EYE STREET, N. W.
WASHINGTON, DC 20006

20 March 1981

Mr. Henry Eschwege
Director
Community and Economic Development Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Eschwege:

On 5 March 1981, the Commission commented extensively on the draft report "Federal Efforts to Manage Marine Mammals Need Improvement". We were subsequently asked to comment briefly on the "Recommendations" and are now pleased to do so. Assuming that our earlier comments have either been incorporated or otherwise addressed in the final report, we succinctly comment on the "Recommendations" as follows:

Page 28: We concur that this point needs to be addressed, but feel that the proposed text may not accomplish the intended purposes since it would still be necessary to meet a substantial burden of showing that either the population is "in danger of becoming depleted" or the regulation of native taking is "necessary for the protection of the marine ecosystem". Also, the text does not appear to provide a basis for reliably predicting the number of animals taken by natives, giving preference to subsistence users, and then allocating any remaining portion of the permissible quota to other legitimate users.

Page 29: We concur with this recommendation.

Page 52: We concur with this recommendation.

Page 65: We concur with this recommendation.

Page 76: We suggest amending the recommendation to read:

"We recommend that the Secretary direct the Fish and Wildlife Service to expedite completion of the Sea Otter Recovery Plan and to proceed with all possible haste to develop an orderly and

APPENDIX III

integrated compilation of available information (map and accompanying text) to provide a data base on the sea otter, its available habitat, and potential conflicts with human activity -- the latter to proceed without awaiting completion of the Recovery Plan proper."

Page 85: The Commission does not believe that legislative clarification of the Fisheries Conservation and Management Act/ Marine Mammal Protection Act relationships is now required since it is not at all clear that an interpretation of incompatibility is warranted. We believe that it would be appropriate for Congress to first direct agencies to attempt to develop either guidelines or regulations to address any issues, and, only if this is not successful, to then proceed legislatively.

Thank you for the opportunity to comment.

Sincerely,

John R. Twiss, Jr.
Executive Director

APPENDIX IV

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

SUBPORT BUILDING
JUNEAU, ALASKA 99801

March 6, 1981

Mr. Henry Eschwege, Director
Community and Economic Development Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Eschwege:

This letter responds to your request dated 3 February 1981 seeking comment on the draft GAO report entitled "Federal Efforts to Manage Marine Mammal Program: Improvements Needed." Two parts of the draft report were forwarded to us; pages 15-27 concerning research and management of walruses, and pages 29-39 in which some aspects of the bowhead whale issue are discussed. My staff has had the opportunity to review both sections.

We have no substantive comments about the latter section dealing with the bowhead issue (pages 29-39). The narrative reporting is largely an account of what are now historical events, mainly from the period 1972 to 1980. From our understanding of those events, the report is correct. Regarding interactions between NMFS, FWS, BLM and the MMP we cannot comment from a position of first hand knowledge, though we do know that BLM and NMFS did make efforts to ensure that research they sponsored was complementary and/or collaborative.

We have several corrections and comments on the part of the report concerning Pacific walruses (pages 15 to 27). They are as follows:

Page 17, Paragraph 2 - Comment indicate that since 1972 there has been a problem, that the walrus pose a threat to the clam fishery. From our perspective, the population was at an optimal level in the period 1970 to about 1973 but has continued to increase above that level. The problem has intensified since 1973. With respect to the proposed fishery, in this instance we are of the opinion that it jeopardizes the walrus herd, rather than the walruses jeopardizing the fishery. This is especially true now that food reserves of walruses in other parts of their range appear to be significantly reduced as indicated by greater numbers of animals in poor physical condition.

Page 18, last sentence at the top of the page should read, "during this period (1972 to 1979)...larger than the optimal population level or, in other words larger than the environment can support on a long-term basis."

Page 19, Paragraph 4, sentence one should read, "the State had strenuously objected to quotas. They were, however, a Federal requirement of the waiver which was demanded by the MMC and FWS. Quotas were for both natives and nonnatives. As a result of the new court ruling the State objected..."

Page 20, Paragraph 2 - a comment, not necessarily a change. If the State's action did indeed catch the FWS by surprise the Federal authorities involved in the issue were, 1) not reading their mail or listening during the preceeding seven years, 2) were totally uninformed about basic issues like the constitution of the State in which they are attempting to manage wildlife, 3) disregarded the history of the State's wildlife maangement program, 4) were unaware of the various privileges accorded to citizens of Alaska on the basis of need rather than strictly ethnic considerations.

We were chagrined to read such a naive, albeit perhaps correct remark.

Page 23, Paragraph 2, line 5 and 6 - we do not agree with the catch figures reported for 1979. It is exceedingly high even if it includes combined Soviet and American harvests plus animals killed and lost during hunting.

Page 23, Paragraph 3, line 2 - we believe the date 1976 is in error, it should be 1979.

Page 25, Paragraph 4, the entire last sentence. Again our remarks are in the way of comment rather than correction. As recently as December 1980 the FWS probably was of the opinion, "that no further action is planned and that it is up to the State to accept the native exemption." This indicates to us the willingness on the part of FWS to continue to allow the management program to deteriorate and, even in view of the severe Federal budget cuts and voiced Federal austerity programs, to attempt to duplicate costly programs which the State is ready, willing and able to fund and carry forward. All that would be required to involve the State are realistic Federal guidelines which actually permit implementation of a conservation program that applies to citizens of Alaska based on resource dependency and use. That appears to be too much of a challenge to work for.

We have no additional corrections or comments. Thank you for according us an opportunity to review the draft report.

Sincerely,

Ronald O. Skoog
Commissioner

(907) 465-4100

APPENDIX V

STATE OF CALIFORNIA—RESOURCES AGENCY EDMUND G. BROWN JR., Governor

DEPARTMENT OF FISH AND GAME
1416 NINTH STREET
SACRAMENTO, CALIFORNIA 95814
(916) 445-3531

February 9, 1981

Mr. Henry Eschwege, Director
Community and Economic
Development Division
U. S. General Accounting Office
Washington, D. C. 20548

Dear Mr. Eschwege:

This is in response to the draft report of "Federal Efforts to Manage Marine Mammal Program: Improvements Needed" that you recently sent me for review. The Department has reviewed the section which addresses efforts to manage the California sea otter and offers the following brief comments thereon.

P. 67, par. 2: It should be noted that State efforts with respect to translocation of sea otters was limited to a single experiment in 1969. At this time the Department moved 17 sea otters from the southern edge of their range a distance of 45 miles north of their capture site back into the center of their range. Otters were never relocated to geographical areas outside their established range.

P. 70, par. 1: This paragraph states that California officials said "there is no point in changing State laws and regulations to conform to MMPA." I believe that it is more correct to state that there was no urgency to change" State laws to conform to the MMPA.

P. 73, par. 3: In reference to the July 24-25, 1980 meeting convened by the Marine Mammal Commission, it should be noted that it was agreed to compile and evaluate relevant biological/ecological information to identify and rank possible transplant sites in British Columbia and Mexico, as well as in Oregon, Washington and California.

I want to thank you for the opportunity to review this draft and hope you find these brief comments helpful.

Sincerely,

E C Fullerton

Director

APPENDIX VI

BOB GRAHAM
Governor
GEORGE FIRESTONE
Secretary of State
JIM SMITH
Attorney General
GERALD A. LEWIS
Comptroller
BILL GUNTER
Treasurer
DOYLE CONNER
Commissioner of Agriculture
RALPH D. TURLINGTON
Commissioner of Education

State of Florida

DEPARTMENT OF NATURAL RESOURCES

DR. ELTON J. GISSENDANNER
Executive Director

3900 COMMONWEALTH BOULEVARD / TALLAHASSEE 32303

March 4, 1981

Mr. Henry Eschwege, Director
U.S. General Accounting Office
Community and Economic Development
Division
Washington, D.C. 20548

Dear Mr. Eschwege:

We appreciate the opportunity to comment on the portion of your Draft of a Proposed Report on Federal Efforts to Manage Marine Program relating to manatees.

Not all the matters discussed in the Draft are within our knowledge. However, the facts which relate to this department are accurate, with the following exceptions:

1. p.47. Second paragraph under "State and Federal program improvements." The sentence which reads, "The law is enforced by the Game and Fresh Water Fish Commission and its Department of Natural Resources." "It's" should read "the" as the two are separate agencies.

2. p.47. At the bottom of the same paragraph, the arrest and warning figures are incorrect. That language should read that in 1979 there were 31 arrests made and 190 warnings issued and in 1980 there were 72 arrests made and 850 warnings issued.

I would also add that the appointment of a full-time manatee coordinator for Florida has significantly improved this agency's ability to coordinate state and federal programs, by providing a focus for both seeking and disseminating information.

Perhaps it would be of interest to you to know that the U.S. Army Corps of Engineers, through its Jacksonville District, has agreed to lend their

APPENDIX VI

expertise to assist us in erecting additional signs warning of manatee protection areas. The assistance will significantly add to the effectiveness of our enforcement program.

Sincerely,

Elton J. Gissendanner
Executive Director

EJG/cgc

APPENDIX VII

GEORGE R. ARIYOSHI
GOVERNOR OF HAWAII

SUSUMU ONO, CHAIRMAN
BOARD OF LAND & NATURAL RESOURCES

EDGAR A. HAMASU
DEPUTY TO THE CHAIRMAN

DIVISIONS:
CONSERVATION AND RESOURCES ENFORCEMENT
CONVEYANCES
FISH AND GAME
FORESTRY
LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF FISH AND GAME
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

March 4, 1981

Mr. Henry Eschwege, Director
Community and Economic Development
Division
U.S. General Accounting Office
Washington, D. C. 20548

AIR MAIL

Dear Mr. Eschwege:

As requested in your letter of February 3, 1981 we have reviewed the draft section on the Hawaiian monk seal relative to GAO's preparation of a report to Congress entitled: "Federal Efforts to Manage Marine Mammal Program: Improvements Needed." We offer the following specific comments on the draft document and general comments on National Marine Fisheries Service's effort to manage the Hawaiian seal and proposed Hawaiian seal "critical habitat" designation.

Specific Comments:

Page 56, paragraph 1:

We suggest that this paragraph incorporate the following additions (underlined): "Periodic field counts by research groups since the late 1950's suggest that there has been a decrease in population size. In 1958, 1,200 animals were reported, while in 1977 fewer than 700 were counted. Determining the magnitude and significance of the apparent seal population decline through sporatic field counts may be misleading because as much as two-thirds of the seals may be away at sea at any given time."

Page 59, paragraph 2:

The 1977 MMC-sponsored field study by Brian and Patti Johnson took place at Laysan Island and not "at certain locations" in the NWHI as described in the document. Furthermore, we understand that the Laysan Island seal study, initially funded by the MMC and currently by NMFS and MMC, was expanded into a five-year project with a 1982 completion date.

Page 62, paragraph 4:

The State's position on denying the Kure Atoll seal study might be better articulated by inserting the following (underlined) to this paragraph: "The State of Hawaii concluded that such taking, which primarily involved testing of radio transmitter and depth-of-dive equipment on eight seals from the Kure population (=45), was not warranted at this time and the permit request was denied. The State contended that the equipment testing project did not directly contribute to the management and recovery of the frail monk seal population at Kure. Instead, this project should logically be conducted on a healthy seal population e.g. French Frigate Shoals with more than 200 seals, that would be resilient enough to recover from any adverse impact resulting from this pilot project."

General Comments:

In spite of state laws protecting the Hawaiian monk seals since 1955, our management authority over these seals was effectively pre-empted in 1976 by the federal government with the listing of the Hawaiian seal on the federal "threatened" and "endangered" species list. Although apprehensive about this listing, which we believed was based more on emotionalism than on the actual status of the Hawaiian seal population, it was felt that the federal government would immediately initiate positive management actions for recovering the "endangered" Hawaiian monk seal population in the Northwestern Hawaiian Islands (NWHI).

We were quite disappointed with National Marine Fisheries Service's (NMFS) delay in managing the Hawaiian seal. And we surmise this delay to be the result of a lack of program coordination between the Marine Mammal Commission (MMC) and NMFS.

However, NMFS's recent shifting of lead responsibility for the Hawaiian seal from the National Marine Mammal Laboratory to its Southwest Fisheries Center and the formulation of a Hawaiian monk seal recovery team are viewed as positive steps in the right direction.

As expected, criticisms have been directed at NMFS for this administrative change. Critics fear that unrestricted fisheries development in the NWHI will now take place resulting in the extinction of the seal population; furthermore, research effort on the Hawaiian seals will be diminished.

The State intends to develop and optimally utilize the fisheries resources in the NWHI, a vast area of about 600,000 square miles (including the Fisheries Conservation Zone). The State is mandated to diversify its economic base which involves the expansion of its fishing industry. As an island-state, land areas are limited, hence we must increasingly rely on our marine resources. The State is also committed to protect and conserve its unique fauna and flora for the benefit of its present and future generations. Therefore, we are obliged to develop our fisheries resources, and without jeopardizing the continued existence of our native wildlife.

Fisheries development and wildlife conservation do not have to be mutually exclusive. Confrontation between development and conservation efforts will only prove to be a detriment to everyone, especially to the resources we are trying to protect. We must strive for common strategy and compromise. The attitude that there is no room for compromise when dealing with an endangered species is unrealistic and impractical. Also it is inexcusable to ignore the economic and political realities of development and conservation actions today.

The fear that Hawaiian seal research will be drastically curtailed because of NMFS's administrative changes is unfounded. We believe the new arrangement will now place equal emphasis on Hawaiian seal management-oriented activities.

The State of Hawaii continues to oppose the establishment of "critical habitat" for the Hawaiian monk seal because: (1) little is known about the ecology and habitat requirements of the seal; (2) "critical habitat designation" is an attempt to restrict human activity, e.g. fisheries development in the NWHI; and (3) it adds another layer of red-tape to an already burgeoning federal bureaucracy to even such matters as required monk seal research.

Even the MMC admits that little is known about the habitat requirements of the Hawaiian seal, yet it attempts to establish discrete boundaries for the seal's habitat because they view the risks as too substantial to gamble in the face of uncertainty. (MMC recommendations: December 1976). Could not this reasoning be equally applied in a reverse manner followed by the conclusion that the risks are too high to circumvent State's effort to utilize the fisheries resources in the NWHI?

The Hawaiian seal already is protected by regulations of the National Wildlife Refuge, the Endangered Species Act and the Marine Mammal Protection Act. Human activity in the seal's habitat (although ill-defined) is now to be further regulated, which appears to be an attempt to preserve the NWHI exclusively for the Hawaiian seals.

We have been assured that only federal agency activities will be impacted by "critical habitat designation." Many private activities are authorized or funded by the federal government, hence federal activities extend into many private sectors. A private fishing vessel with a federally authorized loan may be prohibited from fishing in the NWHI "critical habitat".

"Critical habitat designation" will create another layer of federal bureaucracy. Already Section 7 of the Endangered Species Act requires consultation by federal agencies whose actions may affect an endangered species whether or not critical habitat has been designated for that species. We cannot imagine the addition of yet another time-consuming and costly consultation process that will be established through "critical habitat designation" pursuant to Section 4 of the Endangered Species Act.

APPENDIX VII

There appears to be a concerted effort by NMFS to manage the Hawaiian seals with mutual support from the State. This effort is reflected in NMFS's recent shift of lead responsibility of the Hawaiian seals to its Southwest Fisheries Center with particular involvement of the Honolulu Laboratory and the long-awaited formulation of a Hawaiian monk seal recovery team. However, the objective of protecting and managing the Hawaiian seal population may never be realized unless there is continued and substantial financial support of NMFS's Hawaiian seal management and biological research programs, especially those that will directly benefit the seals (e.g., NMFS-State Kure Atoll captive seal pup project).

At this time Hawaiian seal critical habitat designation is unjustified, unnecessary, and may even hinder attempts by the federal government to manage the Hawaiian monk seal population in the Northwestern Hawaiian Islands.

I hope that our specific and general comments are helpful to GAO. We appreciate the opportunity to provide input on this important matter.

Yours truly,

Kenji Ego

KENJI EGO, Director
Division of Fish and Game

KE:AZK:rfm

APPENDIX VIII

MARINE MAMMAL COMMISSIONERS

AND

MMC COMMITTEE OF SCIENTIFIC ADVISORS
(As of December 31, 1980)

Commissioners	Position	Date appointed
Douglas G. Chapman, Chairman	Dean, College of Fisheries University of Washington	9/20/76
Murry L. Johnson	Practice of Medicine Research Biologist Curator of Mammals, Puget Sound Museum of Natural History, University of Puget Sound	11/13/79
Donald B. Siniff	Professor University of Minnesota	9/15/75
Committee of Scientific Advisors		
Paul K. Dayton, Chairman	Professor of Oceanography Scripps Institution of Oceanography University of California	11/29/76
Daniel B. Botkin	Professor, Department of Biological Sciences and Environmental Studies Program University of California	12/10/79
L. Lee Eberhardt	Staff Scientist Ecosystems Department Battelle Memorial Institute	1/ 8/76
Joseph R. Geraci	Associate Professor Department of Pathology Ontario Veterinary College	9/ 1/78
Gerald L. Kooyman	Physiological Research Laboratory Scripps Institution of Oceanography University of California	1/ 9/78

APPENDIX VIII

Committee of Scientific Advisors	Position	Date appointed
Daniel K. Odell	Division of Biology School of Marine & Atmospheric Sciences University of Miami	9/22/78
William F. Perrin	Leader, Marine Mammal Biology and Technology Program National Marine Fisheries Service Southwest Fisheries Center	9/ 1/80
Katherine Ralls	Office of Zoological Research National Zoo Smithsonian Institution	9/ 9/79
Robert B. Weeden	Professor of Resource Management Division of Life Sciences University of Alaska	9/16/77

FEDERAL FUNDING OF MARINE MAMMAL RESEARCH (note a)

	Fiscal year 1978	Fiscal year 1979
	(thousands)	
Department of Agriculture	$ -	$ 209
Department of Commerce		
National Marine Fisheries Service	3,603.2	4,425.9
National Sea Grant Programs	49.7	68
Department of Defense		
Air Force	-	40
Army	-	44
Naval Ocean Systems Center	545	717
Naval Research Laboratory	-	20
Office of Naval Research	430	538.4
Department of Energy	80	-
Department of Health and Human Services (formerly Department of Health, Education, and Welfare)	772	392.8
Department of the Interior		
Bureau of Land Management	2,519.8	7,457.3
Fish and Wildlife Service	1,042.7	1,452.5
U.S. Geological Survey	30.5	20
National Park Service	64.8	45.8
Department of State	51	500
Marine Mammal Commission	376.1	152.6
National Aeronautics and Space Administration	65	-
National Science Foundation	334.2	479.3
Smithsonian Institution	101.1	133.4
Veterans Administration	98.8	-
Total	$10,163.9	$16,696.0

a/"Survey of Federally-Funded Marine Mammal Research and Studies, FY 70-FY 79," a study prepared under contract with MMC by George H. Waring, Feb. 1981. Data for fiscal year 1980 was not available.

(082093)

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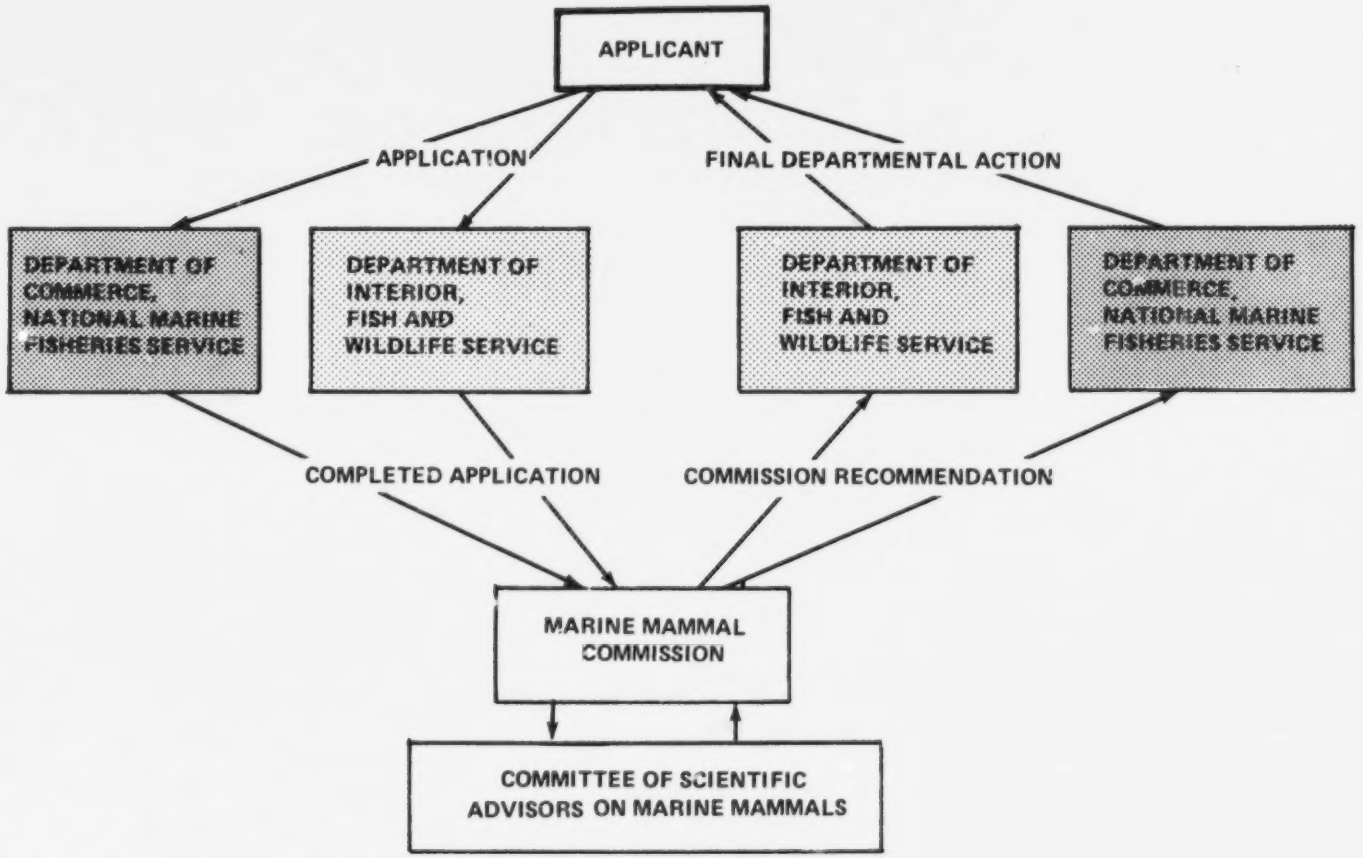
THE MARINE MAMMAL PERMIT APPLICATION REVIEW PROCESS


APPLICANT
APPLICATION
FINAL DEPARTMENTAL ACTION
DEPARTMENT OF COMMERCE, NATIONAL MARINE FISHERIES SERVICE
DEPARTMENT OF INTERIOR, FISH AND WILDLIFE SERVICE
DEPARTMENT OF INTERIOR, FISH AND WILDLIFE SERVICE
DEPARTMENT OF COMMERCE, NATIONAL MARINE FISHERIES SERVICE
COMPLETED APPLICATION
COMMISSION RECOMMENDATION
MARINE MAMMAL COMMISSION
COMMITTEE OF SCIENTIFIC ADVISORS ON MARINE MAMMALS

Source: Annual Report of the Marine Mammal Commission, CY79

APPENDIX X